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To provide authority to control exports, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 23, 2001

Mr. ENZI (for himself, Mr. GRAMM, Mr. SARBANES, Mr. JOHNSON, Mr. HAGEL, Mr. ROBERTS, Ms. STABENOW, Mr. BAYH, Mr. BENNETT, Mr. REID, Ms. CANTWELL, Mr. BUNNING, and Mr. CRAPO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

APRIL 2, 2001

Reported by Mr. GRAMM, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To provide authority to control exports, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**
- 4 (a) **SHORT TITLE.**—This Act may be cited as the
- 5 **“Export Administration Act of 2001”.**

- 1 (b) TABLE OF CONTENTS.—The table of contents of
2 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—GENERAL AUTHORITY

Sec. 101. Commerce Control List.
Sec. 102. Delegation of authority.
Sec. 103. Public information; consultation requirements.
Sec. 104. Right of export.
Sec. 105. Export control advisory committees.
Sec. 106. President's Technology Export Council.
Sec. 107. Prohibition on charging fees.

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

Sec. 201. Authority for national security export controls.
Sec. 202. National Security Control List.
Sec. 203. Country tiers.
Sec. 204. Incorporated parts and components.
Sec. 205. Petition process for modifying export status.

Subtitle B—Foreign Availability and Mass-Market Status

Sec. 211. Determination of foreign availability and mass-market status.
Sec. 212. Presidential set-aside of foreign availability determination.
Sec. 213. Presidential set-aside of mass-market status determination.
Sec. 214. Office of Technology Evaluation.

TITLE III—FOREIGN POLICY EXPORT CONTROLS

Sec. 301. Authority for foreign policy export controls.
Sec. 302. Procedures for imposing controls.
Sec. 303. Criteria for foreign policy export controls.
Sec. 304. Presidential report before imposition of control.
Sec. 305. Imposition of controls.
Sec. 306. Deferral authority.
Sec. 307. Review, renewal, and termination.
Sec. 308. Termination of controls under this title.
Sec. 309. Compliance with international obligations.
Sec. 310. Designation of countries supporting international terrorism.

TITLE IV—EXEMPTION FOR AGRICULTURAL COMMODITIES, MEDICINE, AND MEDICAL SUPPLIES

Sec. 401. Exemption for agricultural commodities, medicine, and medical supplies.
Sec. 402. Termination of export controls required by law.
Sec. 403. Exclusions.

TITLE V—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

Sec. 501. Export license procedures.
 Sec. 502. Interagency dispute resolution process.

TITLE VI—INTERNATIONAL ARRANGEMENTS; FOREIGN BOYCOTTS; SANCTIONS; AND ENFORCEMENT

Sec. 601. International arrangements.
 Sec. 602. Foreign boycotts.
 Sec. 603. Penalties.
 Sec. 604. Multilateral export control regime violation sanctions.
 Sec. 605. Missile proliferation control violations.
 Sec. 606. Chemical and biological weapons proliferation sanctions.
 Sec. 607. Enforcement.
 Sec. 608. Administrative procedure.

TITLE VII—EXPORT CONTROL AUTHORITY AND REGULATIONS

Sec. 701. Export control authority and regulations.
 Sec. 702. Confidentiality of information.

TITLE VIII—MISCELLANEOUS PROVISIONS

Sec. 801. Annual and periodic reports.
 Sec. 802. Technical and conforming amendments.
 Sec. 803. Savings provisions.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) **AFFILIATE.**—The term “affiliate” includes
 4 both governmental entities and commercial entities
 5 that are controlled in fact by the government of a
 6 country.

7 (2) **AGRICULTURE COMMODITY.**—The term “ag-
 8 riculture commodity” means any agricultural com-
 9 modity, food, fiber, or livestock (including livestock,
 10 as defined in section 602(2) of the Emergency Live-
 11 stock Feed Assistance Act of 1988 (title VI of the
 12 Agricultural Act of 1949 (7 U.S.C. 1471(2))), and
 13 including insects); and any product thereof.

1 ~~(3) CONTROL OR CONTROLLED.~~—The terms
 2 “control” and “controlled” mean any requirement,
 3 condition, authorization, or prohibition on the export
 4 or reexport of an item.

5 ~~(4) CONTROL LIST.~~—The term “Control List”
 6 means the Commerce Control List established under
 7 section 101.

8 ~~(5) CONTROLLED COUNTRY.~~—The term “con-
 9 trolled country” means a country with respect to
 10 which exports are controlled under section 201 or
 11 301.

12 ~~(6) CONTROLLED ITEM.~~—The term “controlled
 13 item” means an item the export of which is con-
 14 trolled under this Act.

15 ~~(7) COUNTRY.~~—The term “country” means a
 16 sovereign country or an autonomous customs terri-
 17 tory.

18 ~~(8) COUNTRY SUPPORTING INTERNATIONAL~~
 19 ~~TERRORISM.~~—The term “country supporting inter-
 20 national terrorism” means a country designated by
 21 the Secretary of State pursuant to section 310.

22 ~~(9) DEPARTMENT.~~—The term “Department”
 23 means the Department of Commerce.

24 ~~(10) EXPORT.~~—

25 ~~(A) The term “export” means—~~

(i) an actual shipment, transfer, or transmission of an item out of the United States;

(ii) a transfer to any person of an item either within the United States or outside of the United States with the knowledge or intent that the item will be shipped, transferred, or transmitted to an unauthorized recipient outside the United States; or

(iii) a transfer of an item in the United States to an embassy or affiliate of a country, which shall be considered an export to that country.

(B) The term includes a reexport.

(11) FOREIGN AVAILABILITY STATUS.—The term “foreign availability status” means the status described in section 211(d)(1).

(12) FOREIGN PERSON.—The term “foreign person” means—

(A) an individual who is not—

(i) a United States citizen;

(ii) an alien lawfully admitted for permanent residence to the United States; or

1 (iii) a protected individual as defined
 2 in section 274B(a)(3) of the Immigration
 3 and Nationality Act. (8 U.S.C.
 4 1324b(a)(3));

5 (B) any corporation, partnership, business
 6 association, society, trust, organization, or other
 7 nongovernmental entity created or organized
 8 under the laws of a foreign country or that has
 9 its principal place of business outside the
 10 United States; and

11 (C) any governmental entity of a foreign
 12 country.

13 (13) ITEM.—

14 (A) IN GENERAL.—The term “item”
 15 means any good, technology, or service.

16 (B) OTHER DEFINITIONS.—In this para-
 17 graph:

18 (i) GOOD.—The term “good” means
 19 any article, natural or manmade substance,
 20 material, supply or manufactured product,
 21 including inspection and test equipment,
 22 including source code, and excluding tech-
 23 nical data.

24 (ii) TECHNOLOGY.—The term “tech-
 25 nology” means specific information that is

necessary for the development, production,
or use of an item, and takes the form of
technical data or technical assistance.

(iii) SERVICE.—The term “service”
means any act of assistance, help or aid.

(14) MASS-MARKET STATUS.—The term “mass-
market status” means the status described in section
211(d)(2).

(15) MULTILATERAL EXPORT CONTROL RE-
GIME.—The term “multilateral export control re-
gime” means an international agreement or arrange-
ment among two or more countries, including the
United States, a purpose of which is to coordinate
national export control policies of its members re-
garding certain items. The term includes regimes
such as the Australia Group, the Wassenaar Ar-
rangement, the Missile Technology Control Regime
(MTCR), and the Nuclear Suppliers’ Group Dual
Use Arrangement.

(16) NATIONAL SECURITY CONTROL LIST.—The
term “National Security Control List” means the
list established under section 202(a).

(17) PERSON.—The term “person” includes—

(A) any individual, or partnership, corpora-
tion, business association, society, trust, organi-

1 zation, or any other group created or organized
 2 under the laws of a country; and

3 (B) any government, or any governmental
 4 entity, including any governmental entity oper-
 5 ating as a business enterprise.

6 (18) REEXPORT.—The term “reexport” means
 7 the shipment, transfer, transshipment, or diversion
 8 of items from one foreign country to another.

9 (19) SECRETARY.—The term “Secretary”
 10 means the Secretary of Commerce.

11 (20) UNITED STATES.—The term “United
 12 States” means the States of the United States, the
 13 District of Columbia, and any commonwealth, terri-
 14 tory, dependency, or possession of the United States,
 15 and includes the outer Continental Shelf, as defined
 16 in section 2(a) of the Outer Continental Shelf Lands
 17 Act (42 U.S.C. 1331(a)).

18 (21) UNITED STATES PERSON.—The term
 19 “United States person” means—

20 (A) any United States citizen, resident, or
 21 national (other than an individual resident out-
 22 side the United States who is employed by a
 23 person other than a United States person);

1 (B) any domestic concern (including any
2 permanent domestic establishment of any for-
3 eign concern); and

4 (C) any foreign subsidiary or affiliate (in-
5 cluding any permanent foreign establishment)
6 of any domestic concern which is controlled in
7 fact by such domestic concern, as determined
8 under regulations prescribed by the President.

9 **TITLE I—GENERAL AUTHORITY**

10 **SEC. 101. COMMERCE CONTROL LIST.**

11 (a) IN GENERAL.—Under such conditions as the Sec-
12 retary may impose, consistent with the provisions of this
13 Act, the Secretary—

14 (1) shall establish and maintain a Commerce
15 Control List (in this Act referred to as the “Control
16 List”) consisting of items the export of which are
17 subject to licensing or other authorization or re-
18 quirement; and

19 (2) may require any type of license, or other
20 authorization, including recordkeeping and report-
21 ing, appropriate to the effective and efficient imple-
22 mentation of this Act with respect to the export of
23 an item on the Control List or otherwise subject to
24 control under title II or III of this Act.

1 (b) ~~TYPES OF LICENSE OR OTHER AUTHORIZA-~~
 2 ~~TION.~~—The types of license or other authorization re-
 3 ~~ferred to in subsection (a)(2)~~ include the following:

4 (1) ~~SPECIFIC EXPORTS.~~—A license that author-
 5 izes a specific export.

6 (2) ~~MULTIPLE EXPORTS.~~—A license that au-
 7 thorizes multiple exports in lieu of a license for each
 8 such export.

9 (3) ~~NOTIFICATION IN LIEU OF LICENSE.~~— A
 10 notification in lieu of a license that authorizes a spe-
 11 cific export or multiple exports subject to the condi-
 12 tion that the exporter file with the Department ad-
 13 vance notification of the intent to export in accord-
 14 ance with regulations prescribed by the Secretary.

15 (4) ~~LICENSE EXCEPTION.~~—Authority to export
 16 an item on the Control List without prior license or
 17 notification in lieu of a license.

18 (c) ~~AFTER-MARKET SERVICE AND REPLACEMENT~~
 19 ~~PARTS.~~—A license to export an item under this Act shall
 20 not be required for an exporter to provide after-market
 21 service or replacement parts, to replace on a one-for-one
 22 basis parts that were in an item that was lawfully exported
 23 from the United States, unless—

24 (1) the Secretary determines that such license
 25 is required to export such parts; or

1 (2) the after-market service or replacement
 2 parts would materially enhance the capability of an
 3 item which was the basis for the item being con-
 4 trolled.

5 (d) INCIDENTAL TECHNOLOGY.—A license or other
 6 authorization to export an item under this Act includes
 7 authorization to export technology related to the item, if
 8 the level of the technology does not exceed the minimum
 9 necessary to install, repair, maintain, inspect, operate, or
 10 use the item.

11 (e) REGULATIONS.—The Secretary may prescribe
 12 such regulations as are necessary to carry out the provi-
 13 sions of this Act.

14 **SEC. 102. DELEGATION OF AUTHORITY.**

15 (a) IN GENERAL.—Except as provided in subsection
 16 (b) and subject to the provisions of this Act, the President
 17 may delegate the power, authority, and discretion con-
 18 ferred upon the President by this Act to such depart-
 19 ments, agencies, and officials of the Government as the
 20 President considers appropriate.

21 (b) EXCEPTIONS.—

22 (1) DELEGATION TO APPOINTEES CONFIRMED
 23 BY SENATE.—No authority delegated to the Presi-
 24 dent under this Act may be delegated by the Presi-
 25 dent to, or exercised by, any official of any depart-

1 ment or agency the head of which is not appointed
2 by the President, by and with the advice and consent
3 of the Senate.

4 (2) OTHER LIMITATIONS.—The President may
5 not delegate or transfer the President's power, au-
6 thority, or discretion to overrule or modify any rec-
7 ommendation or decision made by the Secretary, the
8 Secretary of Defense, or the Secretary of State
9 under this Act.

10 **SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIRE-**
11 **MENTS.**

12 (a) PUBLIC INFORMATION.—The Secretary shall
13 keep the public fully informed of changes in export control
14 policy and procedures instituted in conformity with this
15 Act.

16 (b) CONSULTATION WITH PERSONS AFFECTED.—
17 The Secretary shall consult regularly with representatives
18 of a broad spectrum of enterprises, labor organizations,
19 and citizens interested in or affected by export controls
20 in order to obtain their views on United States export con-
21 trol policy and the foreign availability or mass-market sta-
22 tus of controlled items.

1 **SEC. 104. RIGHT OF EXPORT.**

2 No license or other authorization to export may be
3 required under this Act, or under regulations issued under
4 this Act, except to carry out the provisions of this Act.

5 **SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.**

6 (a) APPOINTMENT.—Upon the Secretary's own initia-
7 tive or upon the written request of representatives of a
8 substantial segment of any industry which produces any
9 items subject to export controls under this Act or under
10 the International Emergency Economic Powers Act, or
11 being considered for such controls, the Secretary may ap-
12 point export control advisory committees with respect to
13 any such items. Each such committee shall consist of rep-
14 resentatives of United States industry and Government of-
15 ficials, including officials from the Departments of Com-
16 merce, Defense, and State, and other appropriate depart-
17 ments and agencies of the Government. The Secretary
18 shall permit the widest possible participation by the busi-
19 ness community on the export control advisory commit-
20 tees.

21 (b) FUNCTIONS.—

22 (1) IN GENERAL.—Export control advisory
23 committees appointed under subsection (a) shall ad-
24 vise and assist the Secretary, and any other depart-
25 ment, agency, or official of the Government carrying
26 out functions under this Act, on actions (including

1 all aspects of controls imposed or proposed) designed
2 to carry out the provisions of this Act concerning the
3 items with respect to which such export control advisory
4 committees were appointed.

5 (2) OTHER CONSULTATIONS.—Nothing in paragraph
6 (1) shall prevent the United States Government from consulting, at any time, with any person
7 representing an industry or the general public, regardless of whether such person is a member of an
8 export control advisory committee. Members of the
9 public shall be given a reasonable opportunity, pursuant to regulations prescribed by the Secretary, to
10 present information to such committees.

11 (c) REIMBURSEMENT OF EXPENSES.—Upon the request of any member of any export control advisory committee
12 appointed under subsection (a), the Secretary may, if the Secretary determines it to be appropriate, reimburse
13 such member for travel, subsistence, and other necessary expenses incurred by such member in connection with the
14 duties of such member.

15 (d) CHAIRPERSON.—Each export control advisory
16 committee appointed under subsection (a) shall elect a
17 chairperson, and shall meet at least every 3 months at
18 the call of the chairperson, unless the chairperson determines, in consultation with the other members of the com-

1 mittee, that such a meeting is not necessary to achieve
2 the purposes of this section. Each such committee shall
3 be terminated after a period of 2 years, unless extended
4 by the Secretary for additional periods of 2 years each.
5 The Secretary shall consult with each such committee on
6 such termination or extension of that committee.

7 (e) ACCESS TO INFORMATION.—To facilitate the
8 work of the export control advisory committees appointed
9 under subsection (a), the Secretary, in conjunction with
10 other departments and agencies participating in the ad-
11 ministration of this Act, shall disclose to each such com-
12 mittee adequate information, consistent with national se-
13 curity, pertaining to the reasons for the export controls
14 which are in effect or contemplated for the items or poli-
15 cies for which that committee furnishes advice. Informa-
16 tion provided by the export control advisory committees
17 shall not be subject to disclosure under section 552 of title
18 5, United States Code, and such information shall not be
19 published or disclosed unless the Secretary determines
20 that the withholding thereof is contrary to the national
21 interest.

22 **SEC. 106. PRESIDENT'S TECHNOLOGY EXPORT COUNCIL.**

23 The President may establish a President's Tech-
24 nology Export Council to advise the President on the im-
25 plementation, operation, and effectiveness of this Act.

1 **SEC. 107. PROHIBITION ON CHARGING FEES.**

2 No fee may be charged in connection with the submis-
 3 sion or processing of an application for an export license
 4 under this Act.

5 **TITLE II—NATIONAL SECURITY**
 6 **EXPORT CONTROLS**
 7 **Subtitle A—Authority and**
 8 **Procedures**

9 **SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT**
 10 **CONTROLS.**

11 ~~(a) AUTHORITY.—~~

12 ~~(1) IN GENERAL.—~~In order to carry out the
 13 purposes set forth in subsection (b), the President
 14 may, in accordance with the provisions of this Act,
 15 prohibit, curtail, or require a license, or other au-
 16 thorization for the export of any item subject to the
 17 jurisdiction of the United States or exported by any
 18 person subject to the jurisdiction of the United
 19 States. The President may also require record-
 20 keeping and reporting with respect to the export of
 21 such item.

22 ~~(2) EXERCISE OF AUTHORITY.—~~The authority
 23 contained in this subsection shall be exercised by the
 24 Secretary, in consultation with the Secretary of De-
 25 fense, the intelligence agencies, and such other de-

1 partments and agencies as the Secretary considers
2 appropriate.

3 (b) PURPOSES.—The purposes of national security
4 export controls are the following:

5 (1) To restrict the export of items that would
6 contribute to the military potential of countries so as
7 to prove detrimental to the national security of the
8 United States, its allies or countries sharing com-
9 mon strategic objectives with the United States.

10 (2) To stem the proliferation of weapons of
11 mass destruction, and the means to deliver them,
12 and other significant military capabilities by—

13 (A) leading international efforts to control
14 the proliferation of chemical and biological
15 weapons, nuclear explosive devices, missile deliv-
16 ery systems, key-enabling technologies, and
17 other significant military capabilities;

18 (B) controlling involvement of United
19 States persons in, and contributions by United
20 States persons to, foreign programs intended to
21 develop weapons of mass destruction, missiles,
22 and other significant military capabilities, and
23 the means to design, test, develop, produce,
24 stockpile, or use them; and

1 (C) implementing international treaties or
 2 other agreements or arrangements concerning
 3 controls on exports of designated items; reports
 4 on the production, processing, consumption,
 5 and exports and imports of such items; and
 6 compliance with verification programs.

7 ~~(3) To deter acts of international terrorism.~~

8 (e) ~~END USE AND END USER CONTROLS.~~—Notwith-
 9 standing any other provision of this title, controls may be
 10 imposed, based on the end use or end user, on the export
 11 of any item, that could materially contribute to the pro-
 12 liferation of weapons of mass destruction or the means
 13 to deliver them.

14 (d) ~~ENHANCED CONTROLS.~~—Notwithstanding any
 15 other provisions of this title, the President may determine
 16 that applying the provisions of section 204(b) or section
 17 211 with respect to an item on the National Security Con-
 18 trol List would constitute a significant threat to the na-
 19 tional security of the United States and that such item
 20 requires enhanced control. If the President determines
 21 that enhanced control should apply to such item, it shall
 22 be excluded from the provisions of section 204(b), section
 23 211, or both, until such time as the President shall deter-
 24 mine that such enhanced control should no longer apply

1 to such item. The President may not delegate the author-
 2 ity provided for in this subsection.

3 **SEC. 202. NATIONAL SECURITY CONTROL LIST.**

4 (a) **ESTABLISHMENT OF LIST.**—

5 (1) **ESTABLISHMENT.**—The Secretary shall es-
 6 tablish and maintain a National Security Control
 7 List as part of the Control List.

8 (2) **CONTENTS.**—The National Security Control
 9 List shall be composed of a list of items the export
 10 of which is controlled for national security purposes
 11 under this title.

12 (3) **IDENTIFICATION OF ITEMS FOR NATIONAL**
 13 **SECURITY CONTROL LIST.**—The Secretary, with the
 14 concurrence of the Secretary of Defense and in con-
 15 sultation with the head of any other department or
 16 agency of the United States that the Secretary con-
 17 siders appropriate, shall identify the items to be in-
 18 cluded on the National Security Control List pro-
 19 vided that the National Security Control List shall,
 20 on the date of enactment of this Act, include all of
 21 the items on the Commerce Control List controlled
 22 on the day before the date of enactment of this Act
 23 to protect the national security of the United States,
 24 to prevent the proliferation of weapons of mass de-
 25 struction and the means to deliver them, and to

deter acts of international terrorism. The Secretary shall periodically review and, with the concurrence of the Secretary of Defense and in consultation with the head of any other department or agency of the United States that the Secretary considers appropriate, adjust the National Security Control List to add items that require control under this section and to remove items that no longer warrant control under this section.

~~(b) RISK ASSESSMENT.—~~

~~(1) REQUIREMENT.—In establishing and maintaining the National Security Control List, the risk factors set forth in paragraph (2) shall be considered, weighing national security concerns and economic costs.~~

~~(2) RISK FACTORS.—The risk factors referred to in paragraph (1), with respect to each item, are as follows:~~

~~(A) The characteristics of the item.~~

~~(B) The threat, if any, to the United States or the national security interest of the United States from the misuse or diversion of such item.~~

~~(C) The effectiveness of controlling the item for national security purposes of the~~

1 United States, taking into account mass-market
 2 status, foreign availability, and other relevant
 3 factors.

4 ~~(D)~~ The threat to the national security in-
 5 terests of the United States if the item is not
 6 controlled.

7 ~~(E)~~ Any other appropriate risk factors.

8 ~~(c)~~ REPORT ON CONTROL LIST.—Not later than 90
 9 days after the date of enactment of this Act, the Secretary
 10 shall submit a report to Congress which lists all items on
 11 the Commerce Control List controlled on the day before
 12 the date of enactment of this Act to protect the national
 13 security of the United States, to prevent the proliferation
 14 of weapons of mass destruction and the means to deliver
 15 them, and to deter acts of international terrorism, not in-
 16 cluded on the National Security Control List pursuant to
 17 the provisions of this Act.

18 **SEC. 203. COUNTRY TIERS.**

19 ~~(a)~~ IN GENERAL.—

20 ~~(1)~~ ESTABLISHMENT AND ASSIGNMENT.—In
 21 administering export controls for national security
 22 purposes under this title, the President shall, not
 23 later than 120 days after the date of enactment of
 24 this Act—

1 (A) establish and maintain a country
2 tiering system in accordance with subsection
3 (b); and

4 (B) based on the assessments required
5 under subsection (c), assign each country to an
6 appropriate tier for each item or group of items
7 the export of which is controlled for national se-
8 curity purposes under this title.

9 (2) CONSULTATION.—The establishment and
10 assignment of country tiers under this section shall
11 be made after consultation with the Secretary, the
12 Secretary of Defense, the Secretary of State, the in-
13 telligence agencies, and such other departments and
14 agencies as the President considers appropriate.

15 (3) REDETERMINATION AND REVIEW OF AS-
16 SIGNMENTS.—The President may redetermine the
17 assignment of a country to a particular tier at any
18 time and shall review and, as the President con-
19 siders appropriate, reassign country tiers on an on-
20 going basis. The Secretary shall provide notice of
21 any such reassignment to the Committee on Bank-
22 ing, Housing, and Urban Affairs of the Senate and
23 the Committee on International Relations of the
24 House of Representatives.

1 (4) ~~EFFECTIVE DATE OF TIER ASSIGNMENT.—~~

2 An assignment of a country to a particular tier shall
3 take effect on the date on which notice of the assign-
4 ment is published in the Federal Register.

5 (b) ~~TIERS.—~~

6 (1) ~~IN GENERAL.—~~The President shall establish
7 a country tiering system consisting of 5 tiers for
8 purposes of this section, ranging from tier 1 through
9 tier 5.

10 (2) ~~RANGE.—~~Countries that represent the low-
11 est risk of diversion or misuse of an item on the Na-
12 tional Security Control List shall be assigned to tier
13 1. Countries that represent the highest risk of diver-
14 sion or misuse of an item on the National Security
15 Control List shall be assigned to tier 5.

16 (3) ~~OTHER COUNTRIES.—~~Countries that fall be-
17 tween the lowest and highest risk to the national se-
18 curity interest of the United States with respect to
19 the risk of diversion or misuse of an item on the Na-
20 tional Security Control List shall be assigned to tier
21 2, 3, or 4, respectively, based on the assessments re-
22 quired under subsection (c).

23 (c) ~~ASSESSMENTS.—~~The President shall make an as-
24 sessment of each country in assigning a country tier tak-
25 ing into consideration risk factors including the following:

1 (1) The present and potential relationship of
2 the country with the United States.

3 (2) The present and potential relationship of
4 the country with countries friendly to the United
5 States and with countries hostile to the United
6 States.

7 (3) The country's capabilities regarding chem-
8 ical, biological, and nuclear weapons and the coun-
9 try's membership in, and level of compliance with,
10 relevant multilateral export control regimes.

11 (4) The country's capabilities regarding missile
12 systems and the country's membership in, and level
13 of compliance with, relevant multilateral export con-
14 trol regimes.

15 (5) Whether the country, if a NATO or major
16 non-NATO ally with whom the United States has
17 entered into a free trade agreement as of January
18 1, 1986, controls exports in accordance with the cri-
19 teria and standards of a multilateral export control
20 regime as defined in section 2(15) pursuant to an
21 international agreement to which the United States
22 is a party.

23 (6) The country's other military capabilities
24 and the potential threat posed by the country to the
25 United States or its allies.

1 (7) The effectiveness of the country's export
2 control system.

3 (8) The level of the country's cooperation with
4 United States export control enforcement and other
5 efforts.

6 (9) The risk of export diversion by the country
7 to a higher tier country.

8 (10) The designation of the country as a coun-
9 try supporting international terrorism under section
10 310.

11 (d) TIER APPLICATION.—The country tiering system
12 shall be used in the determination of license requirements
13 pursuant to section 201(a)(1).

14 **SEC. 204. INCORPORATED PARTS AND COMPONENTS.**

15 (a) EXPORT OF ITEMS CONTAINING CONTROLLED
16 PARTS AND COMPONENTS.—Controls may not be imposed
17 under this title or any other provision of law on an item
18 solely because the item contains parts or components sub-
19 ject to export controls under this title, if the parts or
20 components—

21 (1) are essential to the functioning of the item;

22 (2) are customarily included in sales of the item
23 in countries other than controlled countries; and

24 (3) comprise 25 percent or less of the total
25 value of the item;

1 unless the item itself, if exported, would by virtue of the
 2 functional characteristics of the item as a whole make a
 3 significant contribution to the military or proliferation po-
 4 tential of a controlled country or end user which would
 5 prove detrimental to the national security of the United
 6 States, or unless failure to control the item would be con-
 7 trary to the provisions of section 201(c), section 201(d),
 8 or section 309 of this Act.

9 (b) REEXPORTS OF FOREIGN-MADE ITEMS INCOR-
 10 PORATING UNITED STATES CONTROLLED CONTENT.—

11 (1) IN GENERAL.—No authority or permission
 12 may be required under this title to reexport to a
 13 country (other than a country designated as a coun-
 14 try supporting international terrorism pursuant to
 15 section 310) an item that is produced in a country
 16 other than the United States and incorporates parts
 17 or components that are subject to the jurisdiction of
 18 the United States, if the value of the controlled
 19 United States content of the item produced in such
 20 other country is 25 percent or less of the total value
 21 of the item.

22 (2) DEFINITION OF CONTROLLED UNITED
 23 STATES CONTENT.—For purposes of this paragraph,
 24 the term “controlled United States content” of an
 25 item means those parts or components that—

1 (A) are subject to the jurisdiction of the
2 United States;

3 (B) are incorporated into the item; and

4 (C) would, at the time of the reexport, re-
5 quire a license under this title if exported from
6 the United States to a country to which the
7 item is to be reexported.

8 **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT**
9 **STATUS.**

10 (a) **ESTABLISHMENT.**—The Secretary shall establish
11 a process for interested persons to petition the Secretary
12 to change the status of an item on the National Security
13 Control List.

14 (b) **EVALUATIONS AND DETERMINATIONS.**—Evalua-
15 tions and determinations with respect to a petition filed
16 pursuant to this section shall be made in accordance with
17 section 202.

18 **Subtitle B—Foreign Availability**
19 **and Mass-Market Status**

20 **SEC. 211. DETERMINATION OF FOREIGN AVAILABILITY AND**
21 **MASS-MARKET STATUS.**

22 (a) **IN GENERAL.**—The Secretary shall—

23 (1) on a continuing basis;

24 (2) upon a request from the Office of Tech-
25 nology Evaluation; or

1 ~~(3)~~ upon receipt of a petition filed by an inter-
 2 ested party,
 3 review and determine the foreign availability and the
 4 mass-market status of any item the export of which is con-
 5 trolled under this title.

6 ~~(b)~~ PETITION AND CONSULTATION.—

7 ~~(1)~~ IN GENERAL.—The Secretary shall establish
 8 a process for an interested party to petition the Sec-
 9 retary for a determination that an item has a for-
 10 eign availability or mass-market status. In evalu-
 11 ating and making a determination with respect to a
 12 petition filed under this section, the Secretary shall
 13 consult with the Secretary of Defense, Secretary of
 14 State, and other appropriate Government agencies
 15 and with the Office of Technology Evaluation (estab-
 16 lished pursuant to section 214).

17 ~~(2)~~ TIME FOR MAKING DETERMINATION.—The
 18 Secretary shall, within 6 months after receiving a
 19 petition described in subsection ~~(a)(3)~~, determine
 20 whether the item that is the subject of the petition
 21 has foreign availability or mass-market status and
 22 shall notify the petitioner of the determination.

23 ~~(c)~~ RESULT OF DETERMINATION.—In any case in
 24 which the Secretary determines, in accordance with proce-

1 dures and criteria which the Secretary shall by regulation
2 establish, that an item described in subsection (a) has—

3 (1) a foreign availability status; or

4 (2) a mass-market status;

5 the Secretary shall notify the President (and other appro-
6 priate departments and agencies) and publish the notice
7 of the determination in the Federal Register. The Sec-
8 retary's determination shall become final 30 days after the
9 date the notice is published, the item shall be removed
10 from the National Security Control List, and a license or
11 other authorization shall not be required under this title
12 or under section 1211 of the National Defense Authoriza-
13 tion Act of Fiscal Year 1998 with respect to the item,
14 unless the President makes a determination described in
15 section 212 or 213, or takes action under section 309,
16 with respect to the item in that 30-day period.

17 (d) CRITERIA FOR DETERMINING FOREIGN AVAIL-
18 ABILITY AND MASS-MARKET STATUS.—

19 (1) FOREIGN AVAILABILITY STATUS.—The Sec-
20 retary shall determine that an item has foreign
21 availability status under this subtitle, if the item (or
22 a substantially identical or directly competitive
23 item)—

24 (A) is available to controlled countries
25 from sources outside the United States, includ-

ing countries that participate with the United States in multilateral export controls;

(B) can be acquired at a price that is not excessive when compared to the price at which a controlled country could acquire such item from sources within the United States in the absence of export controls; and

(C) is available in sufficient quantity so that the requirement of a license or other authorization with respect to the export of such item is or would be ineffective.

~~(2) MASS-MARKET STATUS.—~~

~~(A) IN GENERAL.—~~In determining whether an item has mass-market status under this subtitle, the Secretary shall consider the following criteria with respect to the item (or a substantially identical or directly competitive item):

(i) The production and availability for sale in a large volume to multiple potential purchasers.

(ii) The widespread distribution through normal commercial channels, such as retail stores, direct marketing catalogues, electronic commerce, and other channels.

1 (iii) The conduciveness to shipment
2 and delivery by generally accepted commer-
3 cial means of transport.

4 (iv) The use for the item's normal in-
5 tended purpose without substantial and
6 specialized service provided by the manu-
7 facturer, distributor, or other third party.

8 (B) DETERMINATION BY SECRETARY.—If
9 the Secretary finds that the item (or a substan-
10 tially identical or directly competitive item)
11 meets the criteria set forth in subparagraph
12 (A), the Secretary shall determine that the item
13 has mass-market status.

14 (3) SPECIAL RULES.—For purposes of this
15 subtitle—

16 (A) SUBSTANTIALLY IDENTICAL ITEM.—
17 The determination of whether an item in rela-
18 tion to another item is a substantially identical
19 item shall include a fair assessment of end-uses,
20 the properties, nature, and quality of the item.

21 (B) DIRECTLY COMPETITIVE ITEM.—

22 (i) IN GENERAL.—The determination
23 of whether an item in relation to another
24 item is a directly competitive item shall in-
25 clude a fair assessment of whether the

1 item, although not substantially identical
 2 in its intrinsic or inherent characteristics,
 3 is substantially equivalent for commercial
 4 purposes and may be adapted for substan-
 5 tially the same uses.

6 (ii) EXCEPTION.—An item is not di-
 7 rectly competitive with a controlled item if
 8 the item is substantially inferior to the
 9 controlled item with respect to characteris-
 10 ties that resulted in the export of the item
 11 being controlled.

12 **SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAIL-**
 13 **ABILITY DETERMINATION.**

14 (a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

15 (1) GENERAL CRITERIA.—

16 (A) IN GENERAL.—If the President deter-
 17 mines that—

18 (i)(I) decontrolling or failing to con-
 19 trol an item constitutes a threat to the na-
 20 tional security of the United States, and
 21 export controls on the item would advance
 22 the national security interests of the
 23 United States, and

24 (II) there is a high probability that
 25 the foreign availability of an item will be

eliminated through international negotiations within a reasonable period of time taking into account the characteristics of the item; or

(ii) failure to control an item would be contrary to the provisions of section 309; the President may set aside the Secretary's determination of foreign availability status with respect to the item.

(B) NONDELEGATION.—The President may not delegate the authority provided for in this paragraph.

(2) REPORT TO CONGRESS.—The President shall promptly—

(A) report any set-aside determination described in paragraph (1), along with the specific reasons why the determination was made, to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives; and

(B) publish the determination in the Federal Register.

(b) PRESIDENTIAL ACTION IN CASE OF SET-
ASIDE.—

1 (1) IN GENERAL.—

2 (A) NEGOTIATIONS.—In any case in which
3 export controls are maintained on an item be-
4 cause the President has made a determination
5 under subsection (a), the President shall ac-
6 tively pursue negotiations with the governments
7 of the appropriate foreign countries for the pur-
8 pose of eliminating such availability.

9 (B) REPORT TO CONGRESS.—Not later
10 than the date the President begins negotiations,
11 the President shall notify in writing the Com-
12 mittee on Banking, Housing, and Urban Affairs
13 of the Senate and the Committee on Inter-
14 national Relations of the House of Representa-
15 tives that the President has begun such nego-
16 tiations and why the President believes it is im-
17 portant to the national security that export con-
18 trols on the item involved be maintained.

19 (2) PERIODIC REVIEW OF DETERMINATION.—

20 The President shall review a determination described
21 in subsection (a) at least every 6 months. Promptly
22 after each review is completed, the Secretary shall
23 submit to the committees of Congress referred to in
24 paragraph (1)(B) a report on the results of the re-
25 view, together with the status of international nego-

1 tiations to eliminate the foreign availability of the
2 item.

3 ~~(3) EXPIRATION OF PRESIDENTIAL SET-~~
4 ~~ASIDE.~~—A determination by the President described
5 in subsection (a)(1)(A) shall cease to apply with re-
6 spect to an item on the earlier of—

7 (A) the date that is 6 months after the date
8 on which the determination is made under sub-
9 section (a); if the President has not commenced
10 international negotiations to eliminate the for-
11 eign availability of the item within that 6-month
12 period;

13 (B) the date on which the negotiations de-
14 scribed in paragraph (1) have terminated with-
15 out achieving an agreement to eliminate foreign
16 availability;

17 (C) the date on which the President deter-
18 mines that there is not a high probability of
19 eliminating foreign availability of the item
20 through negotiation; or

21 (D) the date that is 18 months after the
22 date on which the determination described in
23 subsection (a)(1)(A) is made if the President
24 has been unable to achieve an agreement to

1 eliminate foreign availability within that 18-
2 month period.

3 ~~(4) ACTION ON EXPIRATION OF PRESIDENTIAL~~
4 ~~SET-ASIDE.~~—Upon the expiration of a Presidential
5 set-aside under paragraph (3) with respect to an
6 item, the Secretary shall not require a license or
7 other authorization to export the item.

8 **SEC. 213. PRESIDENTIAL SET-ASIDE OF MASS-MARKET STA-**
9 **TUS DETERMINATION.**

10 ~~(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—~~

11 ~~(1) GENERAL CRITERIA.~~—If the President de-
12 termines that—

13 ~~(A)(i)~~ decontrolling or failing to control an
14 item constitutes a serious threat to the national
15 security of the United States; and

16 ~~(ii)~~ export controls on the item would ad-
17 vance the national security interests of the
18 United States; or

19 ~~(B)~~ failure to control an item would be
20 contrary to the provisions of section 309,
21 the President may set aside the Secretary's deter-
22 mination of mass-market status with respect to the
23 item.

1 (2) NONDELEGATION.—The President may not
2 delegate the authority provided for in this sub-
3 section.

4 (b) PRESIDENTIAL ACTION IN CASE OF SET-
5 ASIDE.—

6 (1) IN GENERAL.—In any case in which export
7 controls are maintained on an item because the
8 President has made a determination under sub-
9 section (a), the President shall report the determina-
10 tion, along with the specific reasons why the deter-
11 mination was made, to the Committee on Banking,
12 Housing, and Urban Affairs of the Senate and the
13 Committee on International Relations of the House
14 of Representatives, and shall publish notice of the
15 determination in the Federal Register not later than
16 30 days after the Secretary publishes notice of the
17 Secretary's determination that an item has mass-
18 market status.

19 (2) PERIODIC REVIEW OF DETERMINATION.—
20 The President shall review a determination made
21 under subsection (a) at least every 6 months.
22 Promptly after each review is completed, the Sec-
23 retary shall submit a report on the results of the re-
24 view to the Committee on Banking, Housing, and
25 Urban Affairs of the Senate and the Committee on

1 International Relations of the House of Representa-
2 tives.

3 **SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.**

4 (a) IN GENERAL.—

5 (1) ESTABLISHMENT OF OFFICE.—The Sec-
6 retary shall establish in the Department of Com-
7 merce an Office of Technology Evaluation (in this
8 subtitle referred to as the “Office”), which shall be
9 under the direction of the Secretary. The Office
10 shall be responsible for gathering, coordinating, and
11 analyzing all the necessary information in order for
12 the Secretary to make determinations of foreign
13 availability and mass-market status under this Act.

14 (2) STAFF.—The Secretary shall ensure that
15 the Office include persons with the training, exper-
16 tise and experience in economic analysis, the defense
17 industrial base, technological developments, national
18 security, and foreign policy export controls to carry
19 out the responsibilities set forth in subsection (b) of
20 this section. In addition to employees of the Depart-
21 ment of Commerce, the Secretary may accept on
22 nonreimbursable detail to the Office, employees of
23 the Departments of Defense, State, and Energy and
24 other departments and agencies as appropriate.

1 (b) RESPONSIBILITIES.—The Office shall be respon-
2 sible for—

3 (1) conducting foreign availability assessments
4 to determine whether a controlled item is available
5 to controlled countries and whether requiring a li-
6 cense, or denial of a license for the export of such
7 item, is or would be ineffective;

8 (2) conducting mass-market assessments to de-
9 termine whether a controlled item is available to
10 controlled countries because of the mass-market sta-
11 tus of the item;

12 (3) monitoring and evaluating worldwide tech-
13 nological developments in industry sectors critical to
14 the national security interests of the United States
15 to determine foreign availability and mass-market
16 status of controlled items;

17 (4) monitoring and evaluating multilateral ex-
18 port control regimes and foreign government export
19 control policies and practices that affect the national
20 security interests of the United States;

21 (5) conducting assessments of United States in-
22 dustrial sectors critical to the United States defense
23 industrial base and how the sectors are affected by
24 technological developments, technology transfers,
25 and foreign competition; and

1 (6) conducting assessments of the impact of
2 United States export control policies on—

3 (A) United States industrial sectors critical
4 to the national security interests of the United
5 States; and

6 (B) the United States economy in general.

7 (c) ~~REPORTS TO CONGRESS.~~—The Secretary shall
8 make available to the Committee on International Rela-
9 tions of the House of Representatives and the Committee
10 on Banking, Housing, and Urban Affairs of the Senate
11 as part of the Secretary's annual report required under
12 section 801 information on the operations of the Office;
13 and on improvements in the Government's ability to assess
14 foreign availability and mass-market status, during the
15 fiscal year preceding the report, including information on
16 the training of personnel, and the use of Commercial Serv-
17 ice Officers of the United States and Foreign Commercial
18 Service to assist in making determinations. The informa-
19 tion shall also include a description of determinations
20 made under this Act during the preceding fiscal year that
21 foreign availability or mass-market status did or did not
22 exist (as the case may be), together with an explanation
23 of the determinations.

24 (d) ~~SHARING OF INFORMATION.~~—Each department
25 or agency of the United States, including any intelligence

1 agency, and all contractors with any such department or
 2 agency, shall, consistent with the need to protect intel-
 3 ligence sources and methods, furnish information to the
 4 Office concerning foreign availability and the mass-market
 5 status of items subject to export controls under this Act.

6 **TITLE III—FOREIGN POLICY**

7 **EXPORT CONTROLS**

8 **SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-**

9 **TROLS.**

10 **(a) AUTHORITY.—**

11 (1) **IN GENERAL.**—In order to carry out the
 12 purposes set forth in subsection (b), the President
 13 may, in accordance with the provisions of this Act,
 14 prohibit, curtail, or require a license, other author-
 15 ization, recordkeeping, or reporting for the export of
 16 any item subject to the jurisdiction of the United
 17 States or exported by any person subject to the ju-
 18 risdiction of the United States.

19 (2) **EXERCISE OF AUTHORITY.**—The authority
 20 contained in this subsection shall be exercised by the
 21 Secretary, in consultation with the Secretary of
 22 State and such other departments and agencies as
 23 the Secretary considers appropriate.

24 (b) **PURPOSES.**—The purposes of foreign policy ex-
 25 port controls are the following:

1 (1) To promote the foreign policy objectives of
2 the United States, consistent with the purposes of
3 this section and the provisions of this Act.

4 (2) To promote international peace, stability,
5 and respect for fundamental human rights.

6 (3) To use export controls to deter and punish
7 acts of international terrorism and to encourage
8 other countries to take immediate steps to prevent
9 the use of their territories or resources to aid, en-
10 courage, or give sanctuary to those persons involved
11 in directing, supporting, or participating in acts of
12 international terrorism.

13 (c) EXCEPTION.—The President may not control
14 under this title the export from a foreign country (whether
15 or not by a United States person) of any item produced
16 or originating in a foreign country that contains parts or
17 components produced or originating in the United States.

18 (d) CONTRACT SANCTITY.—

19 (1) IN GENERAL.—The President may not pro-
20 hibit the export of any item under this title if that
21 item is to be exported—

22 (A) in performance of a binding contract,
23 agreement, or other contractual commitment
24 entered into before the date on which the Presi-
25 dent reports to Congress the President's inten-

tion to impose controls on that item under this title; or

(B) under a license or other authorization issued under this Act before the earlier of the date on which the control is initially imposed or the date on which the President reports to Congress the President's intention to impose controls under this title.

(2) EXCEPTION.—The prohibition contained in paragraph (1) shall not apply in any case in which the President determines and certifies to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on International Relations of the House of Representatives that—

(A) there is a serious threat to a foreign policy interest of the United States;

(B) the prohibition of exports under each binding contract, agreement, commitment, license, or authorization will be instrumental in remedying the situation posing the serious threat; and

(C) the export controls will be in effect only as long as the serious threat exists.

SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.

(a) NOTICE.—

1 (1) INTENT TO IMPOSE FOREIGN POLICY EX-
 2 PORT CONTROL.—Except as provided in section 306,
 3 not later than 45 days before imposing or imple-
 4 menting an export control under this title, the Presi-
 5 dent shall publish in the Federal Register—

6 (A) a notice of intent to do so; and

7 (B) provide for a period of not less than
 8 30 days for any interested person to submit
 9 comments on the export control proposed under
 10 this title.

11 (2) PURPOSES OF NOTICE.—The purposes of
 12 the notice are—

13 (A) to provide an opportunity for the for-
 14 mulation of an effective export control policy
 15 under this title that advances United States
 16 economic and foreign policy interests; and

17 (B) to provide an opportunity for negotia-
 18 tions to achieve the purposes set forth in sec-
 19 tion 301(b).

20 (b) NEGOTIATIONS.—During the 45-day period that
 21 begins on the date of notice described in subsection (a),
 22 the President may negotiate with the government of the
 23 foreign country against which the export control is pro-
 24 posed in order to resolve the reasons underlying the pro-
 25 posed export control.

1 ~~(c) CONSULTATION.—~~

2 ~~(1) REQUIREMENT.—~~The President shall con-
 3 sult with the Committee on Banking, Housing, and
 4 Urban Affairs of the Senate and the Committee on
 5 International Relations of the House of Representa-
 6 tives regarding any export control proposed under
 7 this title and the efforts to achieve or increase multi-
 8 lateral cooperation on the issues or problems under-
 9 lying the proposed export control.

10 ~~(2) CLASSIFIED CONSULTATION.—~~The con-
 11 sultations described in paragraph ~~(1)~~ may be con-
 12 ducted on a classified basis if the Secretary con-
 13 siders it necessary.

14 **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**
 15 **TROLS.**

16 Each export control imposed by the President under
 17 this title shall—

18 ~~(1)~~ have clearly stated and specific United
 19 States foreign policy objectives;

20 ~~(2)~~ have objective standards for evaluating the
 21 success or failure of the export control;

22 ~~(3)~~ include an assessment by the President
 23 that—

1 (A) the export control is likely to achieve
 2 such objectives and the expected time for
 3 achieving the objectives; and

4 (B) the achievement of the objectives of
 5 the export control outweighs any potential costs
 6 of the export control to other United States
 7 economic, foreign policy, humanitarian, or na-
 8 tional security interests;

9 (4) be targeted narrowly; and

10 (5) seek to minimize any adverse impact on the
 11 humanitarian activities of United States and foreign
 12 nongovernmental organizations in the country sub-
 13 ject to the export control.

14 **SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF**
 15 **CONTROL.**

16 (a) **REQUIREMENT.**—Before imposing an export con-
 17 trol under this title, the President shall submit to the
 18 Committee on Banking, Housing, and Urban Affairs of
 19 the Senate and the Committee on International Relations
 20 of the House of Representatives a report on the proposed
 21 export control. The report may be provided on a classified
 22 basis if the Secretary considers it necessary.

23 (b) **CONTENT.**—The report shall contain a descrip-
 24 tion and assessment of each of the criteria described in

1 section 303. In addition, the report shall contain a descrip-
2 tion and assessment of—

3 (1) any diplomatic and other steps that the
4 United States has taken to accomplish the intended
5 objective of the proposed export control;

6 (2) unilateral export controls imposed, and
7 other measures taken, by other countries to achieve
8 the intended objective of the proposed export con-
9 trol;

10 (3) the likelihood of multilateral adoption of
11 comparable export controls;

12 (4) alternative measures to promote the same
13 objectives and the likelihood of their potential suc-
14 cess;

15 (5) any United States obligations under inter-
16 national trade agreements, treaties, or other inter-
17 national arrangements, with which the proposed ex-
18 port control may conflict;

19 (6) the likelihood that the proposed export con-
20 trol could lead to retaliation against United States
21 interests;

22 (7) the likely economic impact of the proposed
23 export control on the United States economy, United
24 States international trade and investment, and

1 United States agricultural interests, commercial in-
 2 terests, and employment; and

3 (8) a conclusion that the probable achievement
 4 of the objectives of the proposed export control out-
 5 weighs any likely costs to United States economic,
 6 foreign policy, humanitarian, or national security in-
 7 terests, including any potential harm to the United
 8 States agricultural and business firms and to the
 9 international reputation of the United States as a
 10 reliable supplier of goods, services, or technology.

11 **SEC. 305. IMPOSITION OF CONTROLS.**

12 The President may impose an export control under
 13 this title after the submission of the report required under
 14 section 304 and publication in the Federal Register of a
 15 notice of the imposition of the export control .

16 **SEC. 306. DEFERRAL AUTHORITY.**

17 (a) **AUTHORITY.**—The President may defer compli-
 18 ance with any requirement contained in section 302(a),
 19 304, or 305 in the case of a proposed export control if—

20 (1) the President determines that a deferral of
 21 compliance with the requirement is in the national
 22 interest of the United States; and

23 (2) the requirement is satisfied not later than
 24 60 days after the date on which the export control
 25 is imposed under this title.

1 (b) ~~TERMINATION OF CONTROL.~~—An export control
 2 with respect to which a deferral has been made under sub-
 3 section (a) shall terminate 60 days after the date the ex-
 4 port control is imposed unless all requirements have been
 5 satisfied before the expiration of the 60-day period.

6 **SEC. 307. REVIEW, RENEWAL, AND TERMINATION.**

7 (a) ~~RENEWAL AND TERMINATION.~~—

8 (1) ~~IN GENERAL.~~—Any export control imposed
 9 under this title shall terminate on March 31 of each
 10 renewal year unless the President renews the export
 11 control on or before such date. For purposes of this
 12 section, the term “renewal year” means 2003 and
 13 every 2 years thereafter.

14 (2) ~~EXCEPTION.~~—This section shall not apply
 15 to an export control imposed under this title that—

16 (A) is required by law;

17 (B) is targeted against any country des-
 18 ignated as a country supporting international
 19 terrorism pursuant to section 310; or

20 (C) has been in effect for less than 1 year
 21 as of February 1 of a renewal year.

22 (b) ~~REVIEW.~~—

23 (1) ~~IN GENERAL.~~—Not later than February 1
 24 of each renewal year, the President shall review all
 25 export controls in effect under this title.

1 ~~(2) CONSULTATION.—~~

2 (A) REQUIREMENT.—Before completing a
3 review under paragraph (1), the President shall
4 consult with the Committee on Banking, Hous-
5 ing, and Urban Affairs of the Senate and the
6 Committee on International Relations of the
7 House of Representative regarding each export
8 control that is being reviewed.

9 (B) CLASSIFIED CONSULTATION.—The
10 consultations may be conducted on a classified
11 basis if the Secretary considers it necessary.

12 ~~(3) PUBLIC COMMENT.—In conducting the re-~~
13 ~~view of each export control under paragraph (1), the~~
14 ~~President shall provide a period of not less than 30~~
15 ~~days for any interested person to submit comments~~
16 ~~on renewal of the export control. The President shall~~
17 ~~publish notice of the opportunity for public comment~~
18 ~~in the Federal Register not less than 45 days before~~
19 ~~the review is required to be completed.~~

20 ~~(c) REPORT TO CONGRESS.—~~

21 (1) REQUIREMENT.—Before renewing an export
22 control imposed under this title, the President shall
23 submit to the committees of Congress referred to in
24 subsection (b)(2)(A) a report on each export control
25 that the President intends to renew.

1 (2) FORM AND CONTENT OF REPORT.—The re-
 2 port may be provided on a classified basis if the Sec-
 3 retary considers it necessary. Each report shall con-
 4 tain the following:

5 (A) A clearly stated explanation of the spe-
 6 cific United States foreign policy objective that
 7 the existing export control was intended to
 8 achieve.

9 (B) An assessment of—

10 (i) the extent to which the existing ex-
 11 port control achieved its objectives before
 12 renewal based on the objective criteria es-
 13 tablished for evaluating the export control;
 14 and

15 (ii) the reasons why the existing ex-
 16 port control has failed to fully achieve its
 17 objectives and, if renewed, how the export
 18 control will achieve that objective before
 19 the next renewal year.

20 (C) An updated description and assess-
 21 ment of—

22 (i) each of the criteria described in
 23 section 303, and

1 (ii) each matter required to be re-
 2 ported under section 304(b) (1) through
 3 (8).

4 (3) RENEWAL OF EXPORT CONTROL.—The
 5 President may renew an export control under this
 6 title after submission of the report described in
 7 paragraph (2) and publication of notice of renewal
 8 in the Federal Register.

9 **SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.**

10 (a) IN GENERAL.—Notwithstanding any other provi-
 11 sion of law, the President—

12 (1) shall terminate any export control imposed
 13 under this title if the President determines that the
 14 control has substantially achieved the objective for
 15 which it was imposed; and

16 (2) may terminate any export control imposed
 17 under this title that is not required by law at any
 18 time.

19 (b) EXCEPTION.—Paragraphs (1) and (2) of sub-
 20 section (a) do not apply to any export control imposed
 21 under this title that is targeted against any country des-
 22 ignated as a country supporting international terrorism
 23 pursuant to section 310.

24 (c) EFFECTIVE DATE OF TERMINATION.—The termi-
 25 nation of an export control pursuant to this section shall

1 take effect on the date notice of the termination is pub-
2 lished in the Federal Register.

3 **SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGA-**
4 **TIONS.**

5 Notwithstanding any other provision of this Act set-
6 ting forth limitations on authority to control exports and
7 except as provided in section 304, the President may im-
8 pose controls on exports to a particular country or coun-
9 tries in order to fulfill obligations or commitments of the
10 United States under resolutions of the United Nations and
11 under treaties, or other international agreements and ar-
12 rangements, to which the United States is a party.

13 **SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING**
14 **INTERNATIONAL TERRORISM.**

15 (a) **LICENSE REQUIRED.**—A license shall be required
16 for the export of an item to a country if the Secretary
17 of State has determined that—

18 (1) the government of such country has repeat-
19 edly provided support for acts of international ter-
20 rorism; and

21 (2) the export of the item could make a signifi-
22 cant contribution to the military potential of such
23 country, including its military logistics capability, or
24 could enhance the ability of such country to support
25 acts of international terrorism.

1 (b) NOTIFICATION.—The Secretary and the Sec-
 2 retary of State shall notify the Committee on International
 3 Relations of the House of Representatives and the Com-
 4 mittee on Banking, Housing, and Urban Affairs and the
 5 Committee on Foreign Relations of the Senate at least 30
 6 days before issuing any license required by subsection (a).

7 (c) DETERMINATIONS REGARDING REPEATED SUP-
 8 PORT.—Each determination of the Secretary of State
 9 under subsection (a)(1), including each determination in
 10 effect on the date of the enactment of the Antiterrorism
 11 and Arms Export Amendments Act of 1989, shall be pub-
 12 lished in the Federal Register.

13 (d) LIMITATIONS ON RESCINDING DETERMINA-
 14 TION.—A determination made by the Secretary of State
 15 under subsection (a)(1) may not be rescinded unless the
 16 President submits to the Speaker of the House of Rep-
 17 resentatives and the Chairman of the Committee on Bank-
 18 ing, Housing, and Urban Affairs and the Chairman of the
 19 Committee on Foreign Relations of the Senate—

20 (1) before the proposed rescission would take
 21 effect, a report certifying that—

22 (A) there has been a fundamental change
 23 in the leadership and policies of the government
 24 of the country concerned;

1 (B) that government is not supporting acts
2 of international terrorism; and

3 (C) that government has provided assur-
4 ances that it will not support acts of inter-
5 national terrorism in the future; or

6 (2) at least 45 days before the proposed rescis-
7 sion would take effect, a report justifying the rescis-
8 sion and certifying that—

9 (A) the government concerned has not pro-
10 vided any support for international terrorism
11 during the preceding 6-month period; and

12 (B) the government concerned has pro-
13 vided assurances that it will not support acts of
14 international terrorism in the future.

15 (c) INFORMATION TO BE INCLUDED IN NOTIFICA-
16 TION.—The Secretary and the Secretary of State shall in-
17 clude in the notification required by subsection (b)—

18 (1) a detailed description of the item to be of-
19 fered, including a brief description of the capabilities
20 of any item for which a license to export is sought;

21 (2) the reasons why the foreign country or
22 international organization to which the export or
23 transfer is proposed to be made needs the item
24 which is the subject of such export or transfer and

1 a description of the manner in which such country
2 or organization intends to use the item;

3 ~~(3)~~ the reasons why the proposed export or
4 transfer is in the national interest of the United
5 States;

6 ~~(4)~~ an analysis of the impact of the proposed
7 export or transfer on the military capabilities of the
8 foreign country or international organization to
9 which such export or transfer would be made;

10 ~~(5)~~ an analysis of the manner in which the pro-
11 posed export would affect the relative military
12 strengths of countries in the region to which the
13 item which is the subject of such export would be de-
14 livered and whether other countries in the region
15 have comparable kinds and amounts of the item; and

16 ~~(6)~~ an analysis of the impact of the proposed
17 export or transfer on the United States relations
18 with the countries in the region to which the item
19 which is the subject of such export would be deliv-
20 ered.

1 **TITLE IV—EXEMPTION FOR AG-**
 2 **RICULTURAL COMMODITIES,**
 3 **MEDICINE, AND MEDICAL**
 4 **SUPPLIES**

5 **SEC. 401. EXEMPTION FOR AGRICULTURAL COMMODITIES,**
 6 **MEDICINE, AND MEDICAL SUPPLIES.**

7 Notwithstanding any other provision of law, the ex-
 8 port controls imposed on items under title III shall not
 9 apply to agricultural commodities, medicine, and medical
 10 supplies.

11 **SEC. 402. TERMINATION OF EXPORT CONTROLS REQUIRED**
 12 **BY LAW.**

13 Notwithstanding any other provision of law, the
 14 President shall terminate any export control mandated by
 15 law on agricultural commodities, medicine, and medical
 16 supplies upon the date of enactment of this Act except
 17 for a control that is specifically reimposed by law.

18 **SEC. 403. EXCLUSIONS.**

19 Sections 401 and 402 do not apply to the following:

20 (1) The export of agricultural commodities,
 21 medicine, and medical supplies that are subject to
 22 national security export controls under title II or are
 23 listed on the United States Munitions List estab-
 24 lished under section 38 of the Arms Export Control
 25 Act (22 U.S.C. 2778).

1 (2) The export of agricultural commodities,
 2 medicine, and medical supplies to a country against
 3 which an embargo is in effect under the Trading
 4 With the Enemy Act.

5 **TITLE V—PROCEDURES FOR EX-**
 6 **PORT LICENSES AND INTER-**
 7 **AGENCY DISPUTE RESOLU-**
 8 **TION**

9 **SEC. 501. EXPORT LICENSE PROCEDURES.**

10 (a) RESPONSIBILITY OF THE SECRETARY.—

11 (1) IN GENERAL.—All applications for a license
 12 or other authorization to export a controlled item
 13 shall be filed in such manner and include such infor-
 14 mation as the Secretary may, by regulation, pre-
 15 scribe.

16 (2) PROCEDURES.—In guidance and regulations
 17 that implement this section, the Secretary shall de-
 18 scribe the procedures required by this section, the
 19 responsibilities of the Secretary and of other depart-
 20 ments and agencies in reviewing applications, the
 21 rights of the applicant, and other relevant matters
 22 affecting the review of license applications.

23 (3) CALCULATION OF PROCESSING TIMES.—In
 24 calculating the processing times set forth in this
 25 title, the Secretary shall use calendar days, except

1 that if the final day for a required action falls on a
 2 weekend or holiday, that action shall be taken no
 3 later than the following business day.

4 (4) CRITERIA FOR EVALUATING APPLICA-
 5 TIONS.—In determining whether to grant an appli-
 6 cation to export a controlled item under this Act, the
 7 following criteria shall be considered:

8 (A) The characteristics of the controlled
 9 item.

10 (B) The threat to—

11 (i) the national security interests of
 12 the United States from items controlled
 13 under title II of this Act; or

14 (ii) the foreign policy of the United
 15 States from items controlled under title III
 16 of this Act.

17 (C) The country tier designation of the
 18 country to which a controlled item is to be ex-
 19 ported pursuant to section 203.

20 (D) The risk of export diversion or misuse
 21 by—

22 (i) the exporter;

23 (ii) the method of export;

24 (iii) the end-user;

1 (iv) the country where the end-user is
2 located; and

3 (v) the end-use.

4 (E) Risk mitigating factors including, but
5 not limited to—

6 (i) changing the characteristics of the
7 controlled item;

8 (ii) after-market monitoring by the ex-
9 porter; and

10 (iii) post-shipment verification.

11 (b) INITIAL SCREENING.—

12 (1) UPON RECEIPT OF APPLICATION.—Upon re-
13 ceipt of an export license application, the Secretary
14 shall enter and maintain in the records of the De-
15 partment information regarding the receipt and sta-
16 tus of the application.

17 (2) INITIAL PROCEDURES.—

18 (A) IN GENERAL.—Not later than 9 days
19 after receiving any license application, the Sec-
20 retary shall—

21 (i) contact the applicant if the appli-
22 cation is improperly completed or if addi-
23 tional information is required, and hold the
24 application for a reasonable time while the
25 applicant provides the necessary correc-

1 tions or information, and such time shall
2 not be included in calculating the time pe-
3 riods prescribed in this title;

4 (ii) refer the application, through the
5 use of a common data base or other
6 means, and all information submitted by
7 the applicant, and all necessary rec-
8 ommendations and analyses by the Sec-
9 retary to the Secretary of Defense, the
10 Secretary of State, and the heads of and
11 other departments and agencies the Sec-
12 retary considers appropriate;

13 (iii) ensure that the classification stat-
14 ed on the application for the export items
15 is correct; and

16 (iv) return the application if a license
17 is not required.

18 (B) REFERRAL NOT REQUIRED.—In the
19 event that the head of a department or agency
20 determines that certain types of applications
21 need not be referred to the department or agen-
22 cy, such department or agency head shall notify
23 the Secretary of the specific types of such appli-
24 cations that the department or agency does not
25 wish to review.

1 ~~(3) WITHDRAWAL OF APPLICATION.~~—An appli-
 2 cant may, by written notice to the Secretary, with-
 3 draw an application at any time before final action.

4 ~~(c) ACTION BY OTHER DEPARTMENTS AND AGEN-~~
 5 ~~CIES.~~—

6 ~~(1) REFERRAL TO OTHER AGENCIES.~~—The Sec-
 7 retary shall promptly refer a license application to
 8 the departments and agencies under subsection (b)
 9 to make recommendations and provide information
 10 to the Secretary.

11 ~~(2) RESPONSIBILITY OF REFERRAL DEPART-~~
 12 ~~MENTS AND AGENCIES.~~—The Secretary of Defense,
 13 the Secretary of State, and the heads of other re-
 14 viewing departments and agencies shall take all nec-
 15 essary actions in a prompt and responsible manner
 16 on an application. Each department or agency re-
 17 viewing an application under this section shall estab-
 18 lish and maintain records properly identifying and
 19 monitoring the status of the matter referred to the
 20 department or agency.

21 ~~(3) ADDITIONAL INFORMATION REQUESTS.~~—
 22 Each department or agency to which a license appli-
 23 cation is referred shall specify to the Secretary any
 24 information that is not in the application that would
 25 be required for the department or agency to make

1 a determination with respect to the application, and
2 the Secretary shall promptly request such informa-
3 tion from the applicant. The time that may elapse
4 between the date the information is requested by
5 that department or agency and the date the infor-
6 mation is received by that department or agency
7 shall not be included in calculating the time periods
8 prescribed in this title.

9 (4) ~~TIME PERIOD FOR ACTION BY REFERRAL~~
10 ~~DEPARTMENTS AND AGENCIES.~~—Within 30 days
11 after the Secretary refers an application under this
12 section, each department or agency to which an ap-
13 plication has been referred shall provide the Sec-
14 retary with a recommendation either to approve the
15 license or to deny the license. A recommendation
16 that the Secretary deny a license shall include a
17 statement of reasons for the recommendation that
18 are consistent with the provisions of this title, and
19 shall cite both the specific statutory and regulatory
20 basis for the recommendation. A department or
21 agency that fails to provide a recommendation in ac-
22 cordance with this paragraph within that 30-day pe-
23 riod shall be deemed to have no objection to the de-
24 cision of the Secretary on the application.

1 (d) ACTION BY THE SECRETARY.—Not later than 30
 2 days after the date the application is referred, the Sec-
 3 retary shall—

4 (1) if there is agreement among the referral de-
 5 partments and agencies to issue or deny the
 6 license—

7 (A) issue the license and ensure all appro-
 8 priate personnel in the Department (including
 9 the Office of Export Enforcement) are notified
 10 of all approved license applications; or

11 (B) notify the applicant of the intention to
 12 deny the license; or

13 (2) if there is no agreement among the referral
 14 departments and agencies, notify the applicant that
 15 the application is subject to the interagency dispute
 16 resolution process provided for in section 502.

17 (e) CONSEQUENCES OF APPLICATION DENIAL.—

18 (1) IN GENERAL.—If a determination is made
 19 to deny a license, the applicant shall be informed in
 20 writing by the Secretary of—

21 (A) the determination;

22 (B) the specific statutory and regulatory
 23 bases for the proposed denial;

24 (C) what, if any, modifications to, or re-
 25 strictions on, the items for which the license

1 was sought would allow such export to be com-
 2 patible with export controls imposed under this
 3 Act, and which officer or employee of the De-
 4 partment would be in a position to discuss
 5 modifications or restrictions with the applicant
 6 and the specific statutory and regulatory bases
 7 for imposing such modifications or restrictions;

8 (D) to the extent consistent with the na-
 9 tional security and foreign policy interests of
 10 the United States; the specific considerations
 11 that led to the determination to deny the appli-
 12 cation; and

13 (E) the availability of appeal procedures.

14 (2) PERIOD FOR APPLICANT TO RESPOND.—

15 The applicant shall have 20 days from the date of
 16 the notice of intent to deny the application to re-
 17 spond in a manner that addresses and corrects the
 18 reasons for the denial. If the applicant does not ade-
 19 quately address or correct the reasons for denial or
 20 does not respond, the license shall be denied. If the
 21 applicant does address or correct the reasons for de-
 22 nial, the application shall receive consideration in a
 23 timely manner.

24 (f) APPEALS AND OTHER ACTIONS BY APPLICANT.—

1 (1) IN GENERAL.—The Secretary shall establish
 2 appropriate procedures for an applicant to appeal to
 3 the Secretary the denial of an application or other
 4 administrative action under this Act. In any case in
 5 which the Secretary proposes to reverse the decision
 6 with respect to the application, the appeal under this
 7 subsection shall be handled in accordance with the
 8 interagency dispute resolution process provided for
 9 in section 502(b)(3).

10 (2) ENFORCEMENT OF TIME LIMITS.—

11 (A) IN GENERAL.—In any case in which
 12 an action prescribed in this section is not taken
 13 on an application within the time period estab-
 14 lished by this section (except in the case of a
 15 time period extended under subsection (g) of
 16 which the applicant is notified), the applicant
 17 may file a petition with the Secretary request-
 18 ing compliance with the requirements of this
 19 section. When such petition is filed, the Sec-
 20 retary shall take immediate steps to correct the
 21 situation giving rise to the petition and shall
 22 immediately notify the applicant of such steps.

23 (B) BRINGING COURT ACTION.—If, within
 24 20 days after a petition is filed under subpara-
 25 graph (A), the processing of the application has

not been brought into conformity with the requirements of this section, or the processing of the application has been brought into conformity with such requirements but the Secretary has not so notified the applicant, the applicant may bring an action in an appropriate United States district court for an order requiring compliance with the time periods required by this section.

~~(g)~~ EXCEPTIONS FROM REQUIRED TIME PERIODS.—

The following actions related to processing an application shall not be included in calculating the time periods prescribed in this section:

~~(1)~~ AGREEMENT OF THE APPLICANT.—Delays

upon which the Secretary and the applicant mutually agree.

~~(2)~~ PRELICENSE CHECKS.—A prelicense check

(for a period not to exceed 60 days) that may be required to establish the identity and reliability of the recipient of items controlled under this Act, if—

~~(A)~~ the need for the prelicense check is de-

termined by the Secretary or by another department or agency in any case in which the request for the prelicense check is made by such department or agency;

1 (B) the request for the prelicense check is
 2 initiated by the Secretary within 5 days after
 3 the determination that the prelicense check is
 4 required; and

5 (C) the analysis of the result of the
 6 prelicense check is completed by the Secretary
 7 within 5 days.

8 (3) REQUESTS FOR GOVERNMENT-TO-GOVERN-
 9 MENT ASSURANCES.—Any request by the Secretary
 10 or another department or agency for government-to-
 11 government assurances of suitable end-uses of items
 12 approved for export, when failure to obtain such as-
 13 surances would result in rejection of the application;
 14 if—

15 (A) the request for such assurances is sent
 16 to the Secretary of State within 5 days after
 17 the determination that the assurances are re-
 18 quired;

19 (B) the Secretary of State initiates the re-
 20 quest of the relevant government within 10
 21 days thereafter; and

22 (C) the license is issued within 5 days
 23 after the Secretary receives the requested assur-
 24 ances.

1 (4) EXCEPTION.—Whenever a prelicense check
 2 described in paragraph (2) or assurances described
 3 in paragraph (3) are not requested within the time
 4 periods set forth therein, then the time expended for
 5 such prelicense check or assurances shall be included
 6 in calculating the time periods established by this
 7 section.

8 (5) MULTILATERAL REVIEW.—Multilateral re-
 9 view of a license application to the extent that such
 10 multilateral review is required by a relevant multilat-
 11 eral regime.

12 (6) CONGRESSIONAL NOTIFICATION.—Such
 13 time as is required for mandatory congressional noti-
 14 fications under this Act.

15 (7) CONSULTATIONS.—Consultation with for-
 16 eign governments, if such consultation is provided
 17 for by a relevant multilateral regime as a pre-
 18 condition for approving a license.

19 (h) CLASSIFICATION REQUESTS AND OTHER INQUIR-
 20 IES.—

21 (1) CLASSIFICATION REQUESTS.—In any case
 22 in which the Secretary receives a written request
 23 asking for the proper classification of an item on the
 24 Control List or the applicability of licensing require-
 25 ments under this title, the Secretary shall promptly

1 notify the Secretary of Defense and other depart-
 2 ments and agencies the Secretary considers appro-
 3 priate. The Secretary shall, within 14 days after re-
 4 ceiving the request, inform the person making the
 5 request of the proper classification.

6 ~~(2) OTHER INQUIRIES.—~~In any case in which
 7 the Secretary receives a written request for informa-
 8 tion under this Act, the Secretary shall, within 30
 9 days after receiving the request, reply with that in-
 10 information to the person making the request.

11 **SEC. 502. INTERAGENCY DISPUTE RESOLUTION PROCESS.**

12 ~~(a) IN GENERAL.—~~All license applications on which
 13 agreement cannot be reached shall be referred to the inter-
 14 agency dispute resolution process for decision.

15 ~~(b) INTERAGENCY DISPUTE RESOLUTION PROC-~~
 16 ~~ESS.—~~

17 ~~(1) INITIAL RESOLUTION.—~~The Secretary shall
 18 establish, select the chairperson of, and determine
 19 procedures for an interagency committee to review
 20 initially all license applications described in sub-
 21 section (a) with respect to which the Secretary and
 22 any of the referral departments and agencies are not
 23 in agreement. The chairperson shall consider the po-
 24 sitions of all the referral departments and agencies
 25 (which shall be included in the minutes described in

1 subsection (c)(2)) and make a decision on the license
2 application, including appropriate revisions or condi-
3 tions thereto.

4 (2) INTELLIGENCE COMMUNITY.—The analytic
5 product of the intelligence community should be fully
6 considered with respect to any proposed license
7 under this title.

8 (3) FURTHER RESOLUTION.—The President
9 shall establish additional levels for review or appeal
10 of any matter that cannot be resolved pursuant to
11 the process described in paragraph (1). Each such
12 review shall—

13 (A) provide for decision-making based on
14 the majority vote of the participating depart-
15 ments and agencies;

16 (B) provide that a department or agency
17 that fails to take a timely position, citing the
18 specific statutory and regulatory bases for a de-
19 nial, shall be deemed to have no objection to the
20 pending decision;

21 (C) provide that any decision of an inter-
22 agency committee established under paragraph
23 (1) or interagency dispute resolution process es-
24 tablished under this paragraph may be esca-
25 lated to the next higher level of review at the

request of any representative of a department or agency that participated in the interagency committee or dispute resolution process that made the decision; and

(D) ensure that matters are resolved or referred to the President not later than 90 days after the date the completed license application is referred by the Secretary.

(c) FINAL ACTION.—

(1) IN GENERAL.—Once a final decision is made under subsection (b), the Secretary shall promptly—

(A) issue the license and ensure that all appropriate personnel in the Department (including the Office of Export Enforcement) are notified of all approved license applications; or

(B) notify the applicant of the intention to deny the application.

(2) MINUTES.—The interagency committee and each level of the interagency dispute resolution process shall keep reasonably detailed minutes of all meetings. On each matter before the interagency committee or before any other level of the interagency dispute resolution process in which members disagree, each member shall clearly state the reasons

1 for the member's position and the reasons shall be
 2 entered in the minutes.

3 **TITLE VI—INTERNATIONAL AR-**
 4 **RANGEMENTS; FOREIGN BOY-**
 5 **COTTS; SANCTIONS; AND EN-**
 6 **FORCEMENT**

7 **SEC. 601. INTERNATIONAL ARRANGEMENTS.**

8 (a) **MULTILATERAL EXPORT CONTROL REGIMES.—**

9 (1) **POLICY.**—It is the policy of the United
 10 States to seek multilateral arrangements that sup-
 11 port the national security objectives of the United
 12 States (as described in title II) and that establish
 13 fairer and more predictable competitive opportunities
 14 for United States exporters.

15 (2) **PARTICIPATION IN EXISTING REGIMES.—**

16 Congress encourages the United States to continue
 17 its active participation in and to strengthen existing
 18 multilateral export control regimes.

19 (3) **PARTICIPATION IN NEW REGIMES.**—It is the

20 policy of the United States to participate in addi-
 21 tional multilateral export control regimes if such
 22 participation would serve the national security inter-
 23 ests of the United States.

24 (b) **ANNUAL REPORT ON MULTILATERAL EXPORT**

25 **CONTROL REGIMES.**—Not later than February 1 of each

1 year, the President shall submit to the Committee on
 2 Banking, Housing, and Urban Affairs of the Senate and
 3 the Committee on International Relations of the House
 4 of Representatives a report evaluating the effectiveness of
 5 each multilateral export control regime, including an as-
 6 sessment of the steps undertaken pursuant to subsections
 7 (c) and (d). The report, or any part of this report, may
 8 be submitted in classified form to the extent the Secretary
 9 considers necessary.

10 (c) STANDARDS FOR MULTILATERAL EXPORT CON-
 11 TROL REGIMES.—The President shall take steps to estab-
 12 lish the following features in any multilateral export con-
 13 trol regime in which the United States is participating or
 14 may participate:

15 (1) FULL MEMBERSHIP.—All supplier countries
 16 are members of the regime, and the policies and ac-
 17 tivities of the members are consistent with the objec-
 18 tives and membership criteria of the multilateral ex-
 19 port control regime.

20 (2) EFFECTIVE ENFORCEMENT AND COMPLI-
 21 ANCE.—The regime promotes enforcement and com-
 22 pliance with the regime's rules and guidelines.

23 (3) PUBLIC UNDERSTANDING.—The regime
 24 makes an effort to enhance public understanding of

1 the purpose and procedures of the multilateral ex-
 2 port control regime.

3 (4) EFFECTIVE IMPLEMENTATION PROCE-
 4 DURES.—The multilateral export control regime has
 5 procedures for the implementation of its rules and
 6 guidelines through uniform and consistent interpre-
 7 tations of its export controls.

8 (5) ENHANCED COOPERATION WITH REGIME
 9 NONMEMBERS.—There is agreement among the
 10 members of the multilateral export control regime
 11 to—

12 (A) cooperate with governments outside
 13 the regime to restrict the export of items con-
 14 trolled by such regime; and

15 (B) establish an ongoing mechanism in the
 16 regime to coordinate planning and implementa-
 17 tion of export control measures related to such
 18 cooperation.

19 (6) PERIODIC HIGH-LEVEL MEETINGS.—There
 20 are regular periodic meetings of high-level represent-
 21 atives of the governments of members of the multi-
 22 lateral export control regime for the purpose of co-
 23 ordinating export control policies and issuing policy
 24 guidance to members of the regime.

1 (7) COMMON LIST OF CONTROLLED ITEMS.—

2 There is agreement on a common list of items con-
3 trolled by the multilateral export control regime.

4 (8) REGULAR UPDATES OF COMMON LIST.—

5 There is a procedure for removing items from the
6 list of controlled items when the control of such
7 items no longer serves the objectives of the members
8 of the multilateral export control regime.

9 (9) TREATMENT OF CERTAIN COUNTRIES.—

10 There is agreement to prevent the export or diver-
11 sion of the most sensitive items to countries whose
12 activities are threatening to the national security of
13 the United States or its allies.

14 (10) HARMONIZATION OF LICENSE APPROVAL
15 PROCEDURES.—There is harmonization among the
16 members of the regime of their national export li-
17 cense approval procedures and practices.

18 (11) UNDERCUTTING.—There is a limit with re-
19 spect to when members of a multilateral export con-
20 trol regime—

21 (A) grant export licenses for any item that
22 is substantially identical to or directly competi-
23 tive with an item controlled pursuant to the re-
24 gime, where the United States has denied an
25 export license for such item, or

1 (B) approve exports to a particular end
 2 user to which the United States has denied ex-
 3 port license for a similar item.

4 (d) STANDARDS FOR NATIONAL EXPORT CONTROL
 5 SYSTEMS.—The President shall take steps to attain the
 6 cooperation of members of each regime in implementing
 7 effective national export control systems containing the
 8 following features:

9 (1) EXPORT CONTROL LAW.—Enforcement au-
 10 thority, civil and criminal penalties, and statutes of
 11 limitations are sufficient to deter potential violations
 12 and punish violators under the member's export con-
 13 trol law.

14 (2) LICENSE APPROVAL PROCESS.—The system
 15 for evaluating export license applications includes
 16 sufficient technical expertise to assess the licensing
 17 status of exports and ensure the reliability of end
 18 users.

19 (3) ENFORCEMENT.—The enforcement mecha-
 20 nism provides authority for trained enforcement offi-
 21 cers to investigate and prevent illegal exports.

22 (4) DOCUMENTATION.—There is a system of
 23 export control documentation and verification with
 24 respect to controlled items.

1 ~~(5) INFORMATION.—~~There are procedures for
 2 the coordination and exchange of information con-
 3 cerning licensing, end users, and enforcement with
 4 other members of the multilateral export control re-
 5 gime.

6 ~~(6) RESOURCES.—~~The member has devoted
 7 adequate resources to administer effectively the au-
 8 thorities, systems, mechanisms, and procedures de-
 9 scribed in paragraphs ~~(1)~~ through ~~(5)~~.

10 ~~(c) OBJECTIVES REGARDING MULTILATERAL EX-~~
 11 ~~PORT CONTROL REGIMES.—~~The President shall seek to
 12 achieve the following objectives with regard to multilateral
 13 export control regimes:

14 ~~(1) STRENGTHEN EXISTING REGIMES.—~~
 15 Strengthen existing multilateral export control
 16 regimes—

17 ~~(A)~~ by creating a requirement to share in-
 18 formation about export license applications
 19 among members before a member approves an
 20 export license; and

21 ~~(B)~~ harmonizing national export license
 22 approval procedures and practices, including
 23 the elimination of undercutting.

1 (2) REVIEW AND UPDATE.—Review and update
2 multilateral regime export control lists with other
3 members, taking into account—

4 (A) national security concerns;

5 (B) the controllability of items; and

6 (C) the costs and benefits of controls.

7 (3) ENCOURAGE COMPLIANCE BY NONMEM-
8 BERS.—Encourage nonmembers of the multilateral
9 export control regime—

10 (A) to strengthen their national export
11 control regimes and improve enforcement;

12 (B) to adhere to the appropriate multilat-
13 eral export control regime; and

14 (C) not to undermine an existing multilat-
15 eral export control regime by exporting con-
16 trolled items in a manner inconsistent with the
17 guidelines of the regime.

18 (f) TRANSPARENCY OF MULTILATERAL EXPORT
19 CONTROL REGIMES.—

20 (1) PUBLICATION OF INFORMATION ON EACH
21 EXISTING REGIME.—Not later than 120 days after
22 the date of enactment of this Act, the Secretary
23 shall, for each multilateral export control regime (to
24 the extent that it is not inconsistent with the ar-
25 rangements of that regime or with the national in-

1 terest), publish in the Federal Register and post on
2 the Department of Commerce website the following
3 information with respect to the regime:

4 (A) The purposes of the regime.

5 (B) The members of the regime.

6 (C) The export licensing policy of the re-
7 gime.

8 (D) The items that are subject to export
9 controls under the regime, together with all
10 public notes, understandings, and other aspects
11 of the agreement of the regime, and all changes
12 thereto.

13 (E) Any countries, end uses, or end users
14 that are subject to the export controls of the re-
15 gime.

16 (F) Rules of interpretation.

17 (G) Major policy actions.

18 (H) The rules and procedures of the re-
19 gime for establishing and modifying any matter
20 described in subparagraphs (A) through (G)
21 and for reviewing export license applications.

22 (2) NEW REGIMES.—Not later than 60 days
23 after the United States joins or organizes a new
24 multilateral export control regime, the Secretary
25 shall, to the extent not inconsistent with arrange-

ments under the regime or with the national interest, publish in the Federal Register and post on the Department of Commerce website the information described in subparagraphs (A) through (H) of paragraph (1) with respect to the regime.

~~(3)~~ PUBLICATION OF CHANGES.—Not later than 60 days after a multilateral export control regime adopts any change in the information published under this subsection, the Secretary shall, to the extent not inconsistent with the arrangements under the regime or the national interest, publish such changes in the Federal Register and post such changes on the Department of Commerce website.

~~(g)~~ SUPPORT OF OTHER COUNTRIES' EXPORT CONTROL SYSTEMS.—The Secretary is encouraged to continue to—

(1) participate in training of, and provide training to, officials of other countries on the principles and procedures for implementing effective export controls; and

(2) participate in any such training provided by other departments and agencies of the United States.

1 **SEC. 602. FOREIGN BOYCOTTS.**

2 (a) PURPOSES.—The purposes of this section are as
3 follows:

4 (1) To counteract restrictive trade practices or
5 boycotts fostered or imposed by foreign countries
6 against other countries friendly to the United States
7 or against any United States person.

8 (2) To encourage and, in specified cases, re-
9 quire United States persons engaged in the export of
10 items to refuse to take actions, including furnishing
11 information or entering into or implementing agree-
12 ments, which have the effect of furthering or sup-
13 porting the restrictive trade practices or boycotts
14 fostered or imposed by any foreign country against
15 a country friendly to the United States or against
16 any United States person.

17 (b) PROHIBITIONS AND EXCEPTIONS.—

18 (1) PROHIBITIONS.—In order to carry out the
19 purposes set forth in subsection (a), the President
20 shall issue regulations prohibiting any United States
21 person, with respect to that person's activities in the
22 interstate or foreign commerce of the United States,
23 from taking or knowingly agreeing to take any of
24 the following actions with intent to comply with, fur-
25 ther, or support any boycott fostered or imposed by
26 a foreign country against a country that is friendly

1 to the United States and is not itself the object of
2 any form of boycott pursuant to United States law
3 or regulation.

4 (A) Refusing, or requiring any other per-
5 son to refuse, to do business with or in the boy-
6 cotted country, with any business concern orga-
7 nized under the laws of the boycotted country,
8 with any national or resident of the boycotted
9 country, or with any other person, pursuant to
10 an agreement with, or requirement of, or a re-
11 quest from or on behalf of the boycotting coun-
12 try (subject to the condition that the intent re-
13 quired to be associated with such an act in
14 order to constitute a violation of the prohibition
15 is not indicated solely by the mere absence of
16 a business relationship with or in the boycotted
17 country, with any business concern organized
18 under the laws of the boycotted country, with
19 any national or resident of the boycotted coun-
20 try, or with any other person).

21 (B) Refusing, or requiring any other per-
22 son to refuse, to employ or otherwise discrimi-
23 nate against any United States person on the
24 basis of the race, religion, sex, or national ori-

1 gin of that person or of any owner, officer, di-
2 rector, or employee of such person.

3 ~~(C) Furnishing information with respect to~~
4 the race, religion, sex, or national origin of any
5 United States person or of any owner, officer,
6 director, or employee of such person.

7 ~~(D) Furnishing information (other than~~
8 furnishing normal business information in a
9 commercial context, as defined by the Sec-
10 retary) about whether any person has, has had,
11 or proposes to have any business relationship
12 (including a relationship by way of sale, pur-
13 chase, legal or commercial representation, ship-
14 ping or other transport, insurance, investment,
15 or supply) with or in the boycotted country,
16 with any business concern organized under the
17 laws of the boycotted country, with any national
18 or resident of the boycotted country, or with
19 any other person that is known or believed to
20 be restricted from having any business relation-
21 ship with or in the boycotting country.

22 ~~(E) Furnishing information about whether~~
23 any person is a member of, has made a con-
24 tribution to, or is otherwise associated with or
25 involved in the activities of any charitable or

1 fraternal organization which supports the boy-
 2 cotted country.

3 ~~(F) Paying, honoring, confirming, or other-~~
 4 ~~wise implementing a letter of credit which con-~~
 5 ~~tains any condition or requirement the compli-~~
 6 ~~ance with which is prohibited by regulations~~
 7 ~~issued pursuant to this paragraph, and no~~
 8 ~~United States person shall, as a result of the~~
 9 ~~application of this paragraph, be obligated to~~
 10 ~~pay or otherwise honor or implement such letter~~
 11 ~~of credit.~~

12 ~~(2) EXCEPTIONS.—Regulations issued pursuant~~
 13 ~~to paragraph (1) shall provide exceptions for—~~

14 ~~(A) compliance, or agreement to comply,~~
 15 ~~with requirements—~~

16 ~~(i) prohibiting the import of items~~
 17 ~~from the boycotted country or items pro-~~
 18 ~~duced or provided, by any business concern~~
 19 ~~organized under the laws of the boycotted~~
 20 ~~country or by nationals or residents of the~~
 21 ~~boycotted country; or~~

22 ~~(ii) prohibiting the shipment of items~~
 23 ~~to the boycotting country on a carrier of~~
 24 ~~the boycotted country or by a route other~~

1 than that prescribed by the boycotting
2 country or the recipient of the shipment;

3 (B) compliance, or agreement to comply,
4 with import and shipping document require-
5 ments with respect to the country of origin, the
6 name of the carrier and route of shipment, the
7 name of the supplier of the shipment, or the
8 name of the provider of other services, except
9 that, for purposes of applying any exception
10 under this subparagraph, no information know-
11 ingly furnished or conveyed in response to such
12 requirements may be stated in negative, black-
13 listing, or similar exclusionary terms, other
14 than with respect to carriers or route of ship-
15 ment as may be permitted by such regulations
16 in order to comply with precautionary require-
17 ments protecting against war risks and confis-
18 cation;

19 (C) compliance, or agreement to comply, in
20 the normal course of business with the unilat-
21 eral and specific selection by a boycotting coun-
22 try, or a national or resident thereof, or car-
23 riers, insurers, suppliers of services to be per-
24 formed within the boycotting country, or spe-
25 cific items which, in the normal course of busi-

1 ness, are identifiable by source when imported
2 into the boycotting country;

3 (D) compliance, or agreement to comply,
4 with export requirements of the boycotting
5 country relating to shipment or transshipment
6 of exports to the boycotted country, to any busi-
7 ness concern of or organized under the laws of
8 the boycotted country, or to any national or
9 resident of the boycotted country;

10 (E) compliance by an individual, or agree-
11 ment by an individual to comply, with the immi-
12 gration or passport requirements of any country
13 with respect to such individual or any member
14 of such individual's family or with requests for
15 information regarding requirements of employ-
16 ment of such individual within the boycotting
17 country; and

18 (F) compliance by a United States person
19 resident in a foreign country, or agreement by
20 such a person to comply, with the laws of the
21 country with respect to the person's activities
22 exclusively therein, and such regulations may
23 contain exceptions for such resident complying
24 with the laws or regulations of the foreign coun-
25 try governing imports into such country of

1 trademarked, trade-named, or similarly specifi-
 2 cally identifiable products, or components of
 3 products for such person's own use, including
 4 the performance of contractual services within
 5 that country.

6 ~~(3) LIMITATION ON EXCEPTIONS.—~~Regulations
 7 issued pursuant to paragraphs ~~(2)(C)~~ and ~~(2)(F)~~
 8 shall not provide exceptions from paragraphs ~~(1)(B)~~
 9 and ~~(1)(C)~~.

10 ~~(4) ANTITRUST AND CIVIL RIGHTS LAWS NOT~~
 11 ~~AFFECTED.—~~Nothing in this subsection may be con-
 12 strued to supersede or limit the operation of the
 13 antitrust or civil rights laws of the United States.

14 ~~(5) EVASION.—~~This section applies to any
 15 transaction or activity undertaken by or through a
 16 United States person or any other person with in-
 17 tent to evade the provisions of this section or the
 18 regulations issued pursuant to this subsection. The
 19 regulations issued pursuant to this section shall ex-
 20 pressly provide that the exceptions set forth in para-
 21 graph ~~(2)~~ do not permit activities or agreements (ex-
 22 pressed or implied by a course of conduct, including
 23 a pattern of responses) that are otherwise prohib-
 24 ited, pursuant to the intent of such exceptions.

25 ~~(c) ADDITIONAL REGULATIONS AND REPORTS.—~~

1 (1) REGULATIONS.—In addition to the regula-
2 tions issued pursuant to subsection (b), regulations
3 issued pursuant to title III shall implement the pur-
4 poses set forth in subsection (a).

5 (2) REPORTS BY UNITED STATES PERSONS.—
6 The regulations shall require that any United States
7 person receiving a request to furnish information;
8 enter into or implement an agreement, or take any
9 other action referred to in subsection (a) shall report
10 that request to the Secretary, together with any
11 other information concerning the request that the
12 Secretary determines appropriate. The person shall
13 also submit to the Secretary a statement regarding
14 whether the person intends to comply, and whether
15 the person has complied, with the request. Any re-
16 port filed pursuant to this paragraph shall be made
17 available promptly for public inspection and copying,
18 except that information regarding the quantity, de-
19 scription, and value of any item to which such report
20 relates may be treated as confidential if the Sec-
21 retary determines that disclosure of that information
22 would place the United States person involved at a
23 competitive disadvantage. The Secretary shall peri-
24 odically transmit summaries of the information con-
25 tained in the reports to the Secretary of State for

1 such action as the Secretary of State, in consultation
 2 with the Secretary, considers appropriate to carry
 3 out the purposes set forth in subsection (a).

4 (d) **PREEMPTION.**—The provisions of this section and
 5 the regulations issued under this section shall preempt any
 6 law, rule, or regulation that—

7 (1) is a law, rule, or regulation of any of the
 8 several States or the District of Columbia, or any of
 9 the territories or possessions of the United States,
 10 or of any governmental subdivision thereof; and

11 (2) pertains to participation in, compliance
 12 with, implementation of, or the furnishing of infor-
 13 mation regarding restrictive trade practices or boy-
 14 cotts fostered or imposed by foreign countries
 15 against other countries.

16 **SEC. 603. PENALTIES.**

17 (a) **CRIMINAL PENALTIES.**—

18 (1) **VIOLATIONS BY AN INDIVIDUAL.**—Any indi-
 19 vidual who knowingly violates, conspires to violate,
 20 or attempts to violate any provision of this Act or
 21 any regulation, license, or order issued under this
 22 Act shall be fined up to 10 times the value of the
 23 exports involved or \$1,000,000, whichever is greater,
 24 imprisoned for not more than 10 years, or both, for
 25 each violation, except that the term of imprisonment

1 may be increased to life for multiple violations or ag-
 2 gravated circumstances.

3 ~~(2) VIOLATIONS BY A PERSON OTHER THAN AN~~
 4 ~~INDIVIDUAL.—Any person other than an individual~~
 5 ~~who knowingly violates, conspires to violate, or at-~~
 6 ~~tempts to violate any provision of this Act or any~~
 7 ~~regulation, license, or order issued under this Act~~
 8 ~~shall be fined up to 10 times the value of the exports~~
 9 ~~involved or \$10,000,000, whichever is greater, for~~
 10 ~~each violation.~~

11 ~~(b) FORFEITURE OF PROPERTY INTEREST AND PRO-~~
 12 ~~CEEDS.—~~

13 ~~(1) FORFEITURE.—Any person who is convicted~~
 14 ~~under paragraph (1) or (2) of subsection (a) shall,~~
 15 ~~in addition to any other penalty, forfeit to the~~
 16 ~~United States—~~

17 ~~(A) any of that person's security or other~~
 18 ~~interest in, claim against, or property or con-~~
 19 ~~tractual rights of any kind in the tangible items~~
 20 ~~that were the subject of the violation;~~

21 ~~(B) any of that person's security or other~~
 22 ~~interest in, claim against, or property or con-~~
 23 ~~tractual rights of any kind in the tangible prop-~~
 24 ~~erty that was used in the export or attempt to~~
 25 ~~export that was the subject of the violation; and~~

1 (C) any of that person's property consti-
 2 tuting, or derived from, any proceeds obtained
 3 directly or indirectly as a result of the violation.

4 (2) PROCEDURES.—The procedures in any for-
 5 feiture under this subsection, and the duties and au-
 6 thority of the courts of the United States and the
 7 Attorney General with respect to any forfeiture ac-
 8 tion under this subsection, or with respect to any
 9 property that may be subject to forfeiture under this
 10 subsection, shall be governed by the provisions of
 11 chapter 46 of title 18, United States Code, to the
 12 same extent as property subject to forfeiture under
 13 that chapter.

14 (e) CIVIL PENALTIES; ADMINISTRATIVE SANC-
 15 TIONS.—

16 (1) CIVIL PENALTIES.—The Secretary may im-
 17 pose a civil penalty of up to \$1,000,000 for each vio-
 18 lation of a provision of this Act or any regulation,
 19 license, or order issued under this Act. A civil pen-
 20 alty under this paragraph may be in addition to, or
 21 in lieu of, any other liability or penalty which may
 22 be imposed for such a violation.

23 (2) DENIAL OF EXPORT PRIVILEGES.—The Sec-
 24 retary may deny the export privileges of any person,
 25 including the suspension or revocation of the author-

1 ity of such person to export or receive United
 2 States-origin items subject to this Act, for a viola-
 3 tion of a provision of this Act or any regulation, li-
 4 cense, or order issued under this Act.

5 (3) EXCLUSION FROM PRACTICE.—The Sec-
 6 retary may exclude any person acting as an attor-
 7 ney, accountant, consultant, freight forwarder, or in
 8 any other representative capacity from participating
 9 before the Department with respect to a license ap-
 10 plication or any other matter under this Act.

11 (d) PAYMENT OF CIVIL PENALTIES.—

12 (1) PAYMENT AS CONDITION OF FURTHER EX-
 13 PORT PRIVILEGES.—The payment of a civil penalty
 14 imposed under subsection (c) may be made a condi-
 15 tion for the granting, restoration, or continuing va-
 16 lidity of any export license, permission, or privilege
 17 granted or to be granted to the person upon whom
 18 such penalty is imposed. The period for which the
 19 payment of a penalty may be made such a condition
 20 may not exceed 1 year after the date on which the
 21 payment is due.

22 (2) DEFERRAL OR SUSPENSION.—

23 (A) IN GENERAL.—The payment of a civil
 24 penalty imposed under subsection (c) may be
 25 deferred or suspended in whole or in part for a

period no longer than any probation period (which may exceed 1 year) that may be imposed upon the person on whom the penalty is imposed.

(B) NO BAR TO COLLECTION OF PENALTY.—A deferral or suspension under subparagraph (A) shall not operate as a bar to the collection of the penalty concerned in the event that the conditions of the suspension, deferral, or probation are not fulfilled.

(3) TREATMENT OF PAYMENTS.—Any amount paid in satisfaction of a civil penalty imposed under subsection (c) shall be covered into the Treasury as miscellaneous receipts except as set forth in section 607(h).

(c) REFUNDS.—

(1) AUTHORITY.—

(A) IN GENERAL.—The Secretary may, in the Secretary's discretion, refund any civil penalty imposed under subsection (c) on the ground of a material error of fact or law in imposition of the penalty.

(B) LIMITATION.—A civil penalty may not be refunded under subparagraph (A) later than 2 years after payment of the penalty.

1 ~~(2) PROHIBITION ON ACTIONS FOR REFUND.—~~

2 ~~Notwithstanding section 1346(a) of title 28, United~~
 3 ~~States Code, no action for the refund of any civil~~
 4 ~~penalty referred to in paragraph (1) may be main-~~
 5 ~~tained in any court.~~

6 ~~(f) EFFECT OF OTHER CONVICTIONS.—~~

7 ~~(1) DENIAL OF EXPORT PRIVILEGES.—Any per-~~
 8 ~~son convicted of a violation of—~~

9 ~~(A) a provision of this Act or the Export~~
 10 ~~Administration Act of 1979,~~

11 ~~(B) a provision of the International Emer-~~
 12 ~~gency Economic Powers Act (50 U.S.C. 1701 et~~
 13 ~~seq.);~~

14 ~~(C) section 793, 794, or 798 of title 18,~~
 15 ~~United States Code,~~

16 ~~(D) section 4(b) of the Internal Security~~
 17 ~~Act of 1950 (50 U.S.C. 783(b));~~

18 ~~(E) section 38 of the Arms Export Control~~
 19 ~~Act (22 U.S.C. 2778);~~

20 ~~(F) section 16 of the Trading with the~~
 21 ~~Enemy Act (50 U.S.C. App. 16);~~

22 ~~(G) any regulation, license, or order issued~~
 23 ~~under any provision of law listed in subpara-~~
 24 ~~graph (A), (B), (C), (D), (E), or (F);~~

1 ~~(H)~~ section 371 or 1001 of title 18, United
 2 States Code, if in connection with the export of
 3 controlled items under this Act or any regula-
 4 tion, license, or order issued under the Inter-
 5 national Emergency Economic Powers Act, or
 6 the export of items controlled under the Arms
 7 Export Control Act,

8 ~~(I)~~ section 175 of title 18, United States
 9 Code,

10 ~~(J)~~ a provision of the Atomic Energy Act
 11 (42 U.S.C. 201 et seq.),

12 ~~(K)~~ section 831 of title 18, United States
 13 Code, or

14 ~~(L)~~ section 2332a of title 18, United
 15 States Code,

16 may, at the discretion of the Secretary, be denied ex-
 17 port privileges under this Act for a period not to ex-
 18 ceed 10 years from the date of the conviction. The
 19 Secretary may also revoke any export license under
 20 this Act in which such person had an interest at the
 21 time of the conviction.

22 ~~(2) RELATED PERSONS.—~~The Secretary may
 23 exercise the authority under paragraph (1) with re-
 24 spect to any person related through affiliation, own-
 25 ership, control, or position of responsibility to a per-

son convicted of any violation of a law set forth in paragraph (1) upon a showing of such relationship with the convicted person. The Secretary shall make such showing only after providing notice and opportunity for a hearing.

~~(g)~~ STATUTE OF LIMITATIONS.—

(1) IN GENERAL.—Except as provided in paragraph (2), a proceeding in which a civil penalty or other administrative sanction (other than a temporary denial order) is sought under subsection (c) may not be instituted more than 5 years after the later of the date of the alleged violation or the date of discovery of the alleged violation.

(2) EXCEPTION.—

(A) TOLLING.—In any case in which a criminal indictment alleging a violation under subsection (a) is returned within the time limits prescribed by law for the institution of such action, the limitation under paragraph (1) for bringing a proceeding to impose a civil penalty or other administrative sanction under this section shall, upon the return of the criminal indictment, be tolled against all persons named as a defendant.

1 (B) DURATION.—The tolling of the limita-
 2 tion with respect to a defendant under subpara-
 3 graph (A) as a result of a criminal indictment
 4 shall continue for a period of 6 months from
 5 the date on which the conviction of the defend-
 6 ant becomes final, the indictment against the
 7 defendant is dismissed, or the criminal action
 8 has concluded.

9 (h) VIOLATIONS DEFINED BY REGULATION.—Noth-
 10 ing in this section shall limit the authority of the Secretary
 11 to define by regulation violations under this Act.

12 (i) CONSTRUCTION.—Nothing in subsection (e), (d),
 13 (e), (f), or (g) limits—

14 (1) the availability of other administrative or
 15 judicial remedies with respect to a violation of a pro-
 16 vision of this Act, or any regulation, order, or license
 17 issued under this Act;

18 (2) the authority to compromise and settle ad-
 19 ministrative proceedings brought with respect to any
 20 such violation; or

21 (3) the authority to compromise, remit, or miti-
 22 gate seizures and forfeitures pursuant to section
 23 1(b) of title VI of the Act of June 15, 1917 (22
 24 U.S.C. 401(b)).

1 **SEC. 604. MULTILATERAL EXPORT CONTROL REGIME VIO-**
2 **LATION SANCTIONS.**

3 (a) IMPOSITION OF SANCTIONS.—

4 (1) IN GENERAL.—The President, subject to
5 subsection (c), shall apply sanctions under sub-
6 section (b) for a period of not less than 2 years and
7 not more than 5 years, if the President determines
8 that—

9 (A) a foreign person has violated any regu-
10 lation issued by a country to control exports for
11 national security purposes pursuant to a multi-
12 lateral export control regime; and

13 (B) such violation has substantially aided a
14 country in—

15 (i) acquiring military significant capa-
16 bilities or weapons, if the country is an ac-
17 tual or potential adversary of the United
18 States;

19 (ii) acquiring nuclear weapons pro-
20 vided such country is other than the de-
21 clared nuclear states of the People's Re-
22 public of China, the Republic of France,
23 the Russian Federation, the United King-
24 dom, and the United States;

25 (iii) acquiring biological or chemical
26 weapons; or

1 ~~(iv) acquiring missiles.~~

2 ~~(2) NOTIFICATION OF CONGRESS.—The Presi-~~
3 ~~dent shall notify Congress of each action taken~~
4 ~~under this section.~~

5 ~~(b) APPLICABILITY AND FORMS OF SANCTIONS.—~~

6 ~~The sanctions referred to in subsection (a) shall apply to~~
7 ~~the foreign person committing the violation, as well as to~~
8 ~~any parent, affiliate, subsidiary, and successor entity of~~
9 ~~the foreign person, and, except as provided in subsection~~
10 ~~(c), are as follows:~~

11 ~~(1) A prohibition on contracting with, and the~~
12 ~~procurement of products and services from, a sanc-~~
13 ~~tioned person, by any department, agency, or instru-~~
14 ~~mentality of the United States Government.~~

15 ~~(2) A prohibition on the importation into the~~
16 ~~United States of all items produced by a sanctioned~~
17 ~~person.~~

18 ~~(c) EXCEPTIONS.—The President shall not apply~~
19 ~~sanctions under this section—~~

20 ~~(1) in the case of procurement of defense~~
21 ~~items—~~

22 ~~(A) under existing contracts or sub-~~
23 ~~contracts, including the exercise of options for~~
24 ~~production quantities to satisfy United States~~
25 ~~operational military requirements;~~

1 ~~(B)~~ if the President determines that the
 2 foreign person or other entity to which the
 3 sanctions would otherwise be applied is a sole
 4 source supplier of essential defense items and
 5 no alternative supplier can be identified; or

6 ~~(C)~~ if the President determines that such
 7 items are essential to the national security
 8 under defense coproduction agreements;

9 ~~(2)~~ in any case in which such sanctions would
 10 violate United States international obligations in-
 11 cluding treaties, agreements, or understandings; or

12 ~~(3)~~ to—

13 ~~(A)~~ items provided under contracts or
 14 other binding agreements (as such terms are
 15 defined by the President in regulations) entered
 16 into before the date on which the President no-
 17 tifies Congress of the intention to impose the
 18 sanctions;

19 ~~(B)~~ after-market service and replacement
 20 parts including upgrades;

21 ~~(C)~~ component parts, but not finished
 22 products; essential to United States products or
 23 productions; or

24 ~~(D)~~ information and technology.

1 (d) ~~EXCLUSION.~~—The President shall not apply
2 sanctions under this section to a parent, affiliate, sub-
3 sidiary, and successor entity of a foreign person if the
4 President determines that—

5 (1) the parent, affiliate, subsidiary, or successor
6 entity (as the case may be) has not knowingly vio-
7 lated the export control regulation violated by the
8 foreign person; and

9 (2) the government of the country with jurisdic-
10 tion over the parent, affiliate, subsidiary, or suc-
11 cessor entity had in effect, at the time of the viola-
12 tion by the foreign person, an effective export con-
13 trol system consistent with principles set forth in
14 section 601(b)(2).

15 (e) ~~SUBSEQUENT MODIFICATIONS OF SANCTIONS.~~—
16 The President may, after consultation with the Committee
17 on Banking, Housing, and Urban Affairs of the Senate
18 and the Committee on International Relations of the
19 House of Representatives, limit the scope of sanctions ap-
20 plied to a parent, affiliate, subsidiary, or successor entity
21 of the foreign person determined to have committed the
22 violation on account of which the sanctions were imposed;
23 if the President determines that—

24 (1) the parent, affiliate, subsidiary, or successor
25 entity (as the case may be) has not, on the basis of

1 evidence available to the United States, itself vio-
 2 lated the export control regulation involved, either
 3 directly or through a course of conduct;

4 (2) the government with jurisdiction over the
 5 parent, affiliate, subsidiary, or successor entity has
 6 improved its export control system as measured by
 7 the criteria set forth in section 601(b)(2); and

8 (3) the parent, affiliate, subsidiary, or successor
 9 entity, has instituted improvements in internal con-
 10 trols sufficient to detect and prevent violations of
 11 the multilateral export control regime.

12 **SEC. 605. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

13 (a) VIOLATIONS BY UNITED STATES PERSONS.—

14 (1) SANCTIONS.—

15 (A) IN GENERAL.—If the President deter-
 16 mines that a United States person knowingly—

17 (i) exports, transfers, or otherwise en-
 18 gages in the trade of any item on the
 19 MTCR Annex, in violation of the provi-
 20 sions of section 38 (22 U.S.C. 2778) or
 21 chapter 7 of the Arms Export Control Act,
 22 title II or III of this Act, or any regula-
 23 tions or orders issued under any such pro-
 24 visions;

1 (ii) conspires to or attempts to engage
2 in such export, transfer, or trade, or

3 (iii) facilitates such export, transfer,
4 or trade by any other person;

5 then the President shall impose the applicable
6 sanctions described in subparagraph (B).

7 (B) ~~SANCTIONS DESCRIBED.~~—The sanc-
8 tions which apply to a United States person
9 under subparagraph (A) are the following:

10 (i) If the item on the MTCR Annex
11 involved in the export, transfer, or trade is
12 missile equipment or technology within cat-
13 egory II of the MTCR Annex, then the
14 President shall deny to such United States
15 person, for a period of 2 years, licenses for
16 the transfer of missile equipment or tech-
17 nology controlled under this Act.

18 (ii) If the item on the MTCR Annex
19 involved in the export, transfer, or trade is
20 missile equipment or technology within cat-
21 egory I of the MTCR Annex, then the
22 President shall deny to such United States
23 person, for a period of not less than 2
24 years, all licenses for items the export of
25 which is controlled under this Act.

1 (2) DISCRETIONARY SANCTIONS.—In the case
 2 of any determination referred to in paragraph (1),
 3 the Secretary may pursue any other appropriate
 4 penalties under section 603.

5 (3) WAIVER.—The President may waive the im-
 6 position of sanctions under paragraph (1) on a per-
 7 son with respect to an item if the President certifies
 8 to Congress that—

9 (A) the item is essential to the national se-
 10 curity of the United States; and

11 (B) such person is a sole source supplier of
 12 the item; the item is not available from any al-
 13 ternative reliable supplier; and the need for the
 14 item cannot be met in a timely manner by im-
 15 proved manufacturing processes or technological
 16 developments.

17 (b) TRANSFERS OF MISSILE EQUIPMENT OR TECH-
 18 NOLOGY BY FOREIGN PERSONS.—

19 (1) SANCTIONS.—

20 (A) IN GENERAL.—Subject to paragraphs
 21 (3) through (7), if the President determines
 22 that a foreign person, after the date of enact-
 23 ment of this section, knowingly—

24 (i) exports, transfers, or otherwise en-
 25 gages in the trade of any MTCR equip-

1 ment or technology that contributes to the
 2 design, development, or production of mis-
 3 siles in a country that is not an MTCR ad-
 4 herent and would be, if it were United
 5 States-origin equipment or technology,
 6 subject to the jurisdiction of the United
 7 States under this Act,

8 (ii) conspires to or attempts to engage
 9 in such export, transfer, or trade, or

10 (iii) facilitates such export, transfer,
 11 or trade by any other person,

12 or if the President has made a determination
 13 with respect to a foreign person under section
 14 73(a) of the Arms Export Control Act, then the
 15 President shall impose on that foreign person
 16 the applicable sanctions under subparagraph
 17 (B).

18 (B) SANCTIONS DESCRIBED.—The sanc-
 19 tions which apply to a foreign person under
 20 subparagraph (A) are the following:

21 (i) If the item involved in the export,
 22 transfer, or trade is within category II of
 23 the MTCR Annex, then the President shall
 24 deny, for a period of 2 years, licenses for
 25 the transfer to such foreign person of mis-

1 sile equipment or technology the export of
2 which is controlled under this Act.

3 (ii) If the item involved in the export,
4 transfer, or trade is within category I of
5 the MTCR Annex, then the President shall
6 deny, for a period of not less than 2 years,
7 licenses for the transfer to such foreign
8 person of items the export of which is con-
9 trolled under this Act.

10 (iii) If, in addition to actions taken
11 under clauses (i) and (ii), the President de-
12 termines that the export, transfer, or trade
13 has substantially contributed to the design,
14 development, or production of missiles in a
15 country that is not an MTCR adherent,
16 then the President shall prohibit, for a pe-
17 riod of not less than 2 years, the importa-
18 tion into the United States of products
19 produced by that foreign person.

20 (2) ~~INAPPLICABILITY WITH RESPECT TO MTCR~~
21 ~~ADHERENTS.~~—Paragraph (1) does not apply with
22 respect to—

23 (A) any export, transfer, or trading activ-
24 ity that is authorized by the laws of an MTCR

1 adherent, if such authorization is not obtained
2 by misrepresentation or fraud; or

3 ~~(B) any export, transfer, or trade of an~~
4 ~~item to an end user in a country that is an~~
5 ~~MTCR adherent.~~

6 ~~(3) EFFECT OF ENFORCEMENT ACTIONS BY~~
7 ~~MTCR ADHERENTS.—~~Sanctions set forth in para-
8 graph (1) may not be imposed under this subsection
9 on a person with respect to acts described in such
10 paragraph or, if such sanctions are in effect against
11 a person on account of such acts, such sanctions
12 shall be terminated, if an MTCR adherent is taking
13 judicial or other enforcement action against that
14 person with respect to such acts; or that person has
15 been found by the government of an MTCR adher-
16 ent to be innocent of wrongdoing with respect to
17 such acts.

18 ~~(4) ADVISORY OPINIONS.—~~The Secretary, in
19 consultation with the Secretary of State and the
20 Secretary of Defense, may, upon the request of any
21 person, issue an advisory opinion to that person as
22 to whether a proposed activity by that person would
23 subject that person to sanctions under this sub-
24 section. Any person who relies in good faith on such
25 an advisory opinion which states that the proposed

1 activity would not subject a person to such sanc-
 2 tions, and any person who thereafter engages in
 3 such activity, may not be made subject to such sanc-
 4 tions on account of such activity.

5 (5) WAIVER AND REPORT TO CONGRESS.—

6 (A) WAIVER.—In any case other than one
 7 in which an advisory opinion has been issued
 8 under paragraph (4) stating that a proposed ac-
 9 tivity would not subject a person to sanctions
 10 under this subsection, the President may waive
 11 the application of paragraph (1) to a foreign
 12 person if the President determines that such
 13 waiver is essential to the national security of
 14 the United States.

15 (B) REPORT TO CONGRESS.—In the event
 16 that the President decides to apply the waiver
 17 described in subparagraph (A), the President
 18 shall so notify Congress not less than 20 work-
 19 ing days before issuing the waiver. Such notifi-
 20 cation shall include a report fully articulating
 21 the rationale and circumstances which led the
 22 President to apply the waiver.

23 (6) ADDITIONAL WAIVER.—The President may
 24 waive the imposition of sanctions under paragraph

1 ~~(1)~~ on a person with respect to a product or service
2 if the President certifies to the Congress that—

3 ~~(A)~~ the product or service is essential to
4 the national security of the United States; and

5 ~~(B)~~ such person is a sole source supplier of
6 the product or service; the product or service is
7 not available from any alternative reliable sup-
8 plier; and the need for the product or service
9 cannot be met in a timely manner by improved
10 manufacturing processes or technological devel-
11 opments.

12 ~~(7)~~ EXCEPTIONS.—The President shall not
13 apply the sanction under this subsection prohibiting
14 the importation of the products of a foreign
15 person—

16 ~~(A)~~ in the case of procurement of defense
17 articles or defense services—

18 ~~(i)~~ under existing contracts or sub-
19 contracts; including the exercise of options
20 for production quantities to satisfy require-
21 ments essential to the national security of
22 the United States;

23 ~~(ii)~~ if the President determines that
24 the person to which the sanctions would be
25 applied is a sole source supplier of the de-

1 fense articles and services; that the defense
2 articles or services are essential to the na-
3 tional security of the United States; and
4 that alternative sources are not readily or
5 reasonably available; or

6 (iii) if the President determines that
7 such articles or services are essential to the
8 national security of the United States
9 under defense coproduction agreements or
10 NATO Programs of Cooperation;

11 (B) to products or services provided under
12 contracts entered into before the date on which
13 the President publishes his intention to impose
14 the sanctions; or

15 (C) to—

16 (i) spare parts;

17 (ii) component parts; but not finished
18 products; essential to United States prod-
19 ucts or production;

20 (iii) routine services and maintenance
21 of products; to the extent that alternative
22 sources are not readily or reasonably avail-
23 able; or

1 (iv) information and technology essen-
 2 tial to United States products or produc-
 3 tion.

4 (c) DEFINITIONS.—In this section:

5 (1) MISSILE.—The term “missile” means a cat-
 6 egory I system as defined in the MTCR Annex, and
 7 any other unmanned delivery system of similar capa-
 8 bility, as well as the specially designed production
 9 facilities for these systems.

10 (2) MISSILE TECHNOLOGY CONTROL REGIME;
 11 MTCR.—The term “Missile Technology Control Re-
 12 gime” or “MTCR” means the policy statement, be-
 13 tween the United States, the United Kingdom, the
 14 Federal Republic of Germany, France, Italy, Can-
 15 ada, and Japan, announced on April 16, 1987, to re-
 16 strict sensitive missile-relevant transfers based on
 17 the MTCR Annex, and any amendments thereto.

18 (3) MTCR ADHERENT.—The term “MTCR ad-
 19 herent” means a country that participates in the
 20 MTCR or that, pursuant to an international under-
 21 standing to which the United States is a party, con-
 22 trols MTCR equipment or technology in accordance
 23 with the criteria and standards set forth in the
 24 MTCR.

1 (4) ~~MTCR ANNEX.~~—The term “MTCR Annex”
 2 means the Guidelines and Equipment and Tech-
 3 nology Annex of the MTCR, and any amendments
 4 thereto.

5 (5) ~~MISSILE EQUIPMENT OR TECHNOLOGY;~~
 6 ~~MTCR EQUIPMENT OR TECHNOLOGY.~~—The terms
 7 “missile equipment or technology” and “MTCR
 8 equipment or technology” mean those items listed in
 9 category I or category II of the MTCR Annex.

10 (6) ~~FOREIGN PERSON.~~—The term “foreign per-
 11 son” means any person other than a United States
 12 person.

13 (7) ~~PERSON.~~—

14 (A) ~~IN GENERAL.~~—The term “person”
 15 means a natural person as well as a corpora-
 16 tion, business association, partnership, society,
 17 trust, any other nongovernmental entity, orga-
 18 nization, or group, and any governmental entity
 19 operating as a business enterprise, and any suc-
 20 cessor of any such entity.

21 (B) ~~IDENTIFICATION IN CERTAIN CASES.~~—

22 In the case of countries where it may be impos-
 23 sible to identify a specific governmental entity
 24 referred to in subparagraph (A), the term “per-
 25 son” means—

1 (i) all activities of that government re-
 2 lating to the development or production of
 3 any missile equipment or technology; and

4 (ii) all activities of that government
 5 affecting the development or production of
 6 aircraft, electronics, and space systems or
 7 equipment.

8 (8) OTHERWISE ENGAGED IN THE TRADE OF.—

9 The term “otherwise engaged in the trade of”
 10 means, with respect to a particular export or trans-
 11 fer, to be a freight forwarder or designated export-
 12 ing agent, or a consignee or end user of the item to
 13 be exported or transferred.

14 **SEC. 606. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**
 15 **LIFERATION SANCTIONS.**

16 (a) IMPOSITION OF SANCTIONS.—

17 (1) DETERMINATION BY THE PRESIDENT.—Ex-
 18 cept as provided in subsection (b)(2), the President
 19 shall impose both of the sanctions described in sub-
 20 section (c) if the President determines that a foreign
 21 person, on or after the date of enactment of this sec-
 22 tion, has knowingly and materially contributed—

23 (A) through the export from the United
 24 States of any item that is subject to the juris-
 25 diction of the United States under this Act, or

1 ~~(B)~~ through the export from any other
 2 country of any item that would be, if it were a
 3 United States item, subject to the jurisdiction
 4 of the United States under this Act,
 5 to the efforts by any foreign country, project, or en-
 6 tity described in paragraph ~~(2)~~ to use, develop,
 7 produce, stockpile, or otherwise acquire chemical or
 8 biological weapons.

9 ~~(2) COUNTRIES, PROJECTS, OR ENTITIES RE-~~
 10 ~~CEIVING ASSISTANCE.—~~Paragraph ~~(1)~~ applies in the
 11 case of—

12 ~~(A)~~ any foreign country that the President
 13 determines has, at any time after the date of
 14 enactment of this Act—

15 ~~(i)~~ used chemical or biological weap-
 16 ons in violation of international law;

17 ~~(ii)~~ used lethal chemical or biological
 18 weapons against its own nationals; or

19 ~~(iii)~~ made substantial preparations to
 20 engage in the activities described in clause
 21 ~~(i)~~ or ~~(ii)~~;

22 ~~(B)~~ any foreign country whose government
 23 is determined for purposes of section 310 to be
 24 a government that has repeatedly provided sup-
 25 port for acts of international terrorism; or

1 ~~(C) any other foreign country, project, or~~
 2 entity designated by the President for purposes
 3 of this section.

4 ~~(3) PERSONS AGAINST WHICH SANCTIONS ARE~~
 5 TO BE IMPOSED.—Sanctions shall be imposed pursu-
 6 ant to paragraph ~~(1)~~ on—

7 ~~(A) the foreign person with respect to~~
 8 which the President makes the determination
 9 described in that paragraph;

10 ~~(B) any successor entity to that foreign~~
 11 person;

12 ~~(C) any foreign person that is a parent or~~
 13 subsidiary of that foreign person if that parent
 14 or subsidiary knowingly assisted in the activities
 15 which were the basis of that determination; and

16 ~~(D) any foreign person that is an affiliate~~
 17 of that foreign person if that affiliate knowingly
 18 assisted in the activities which were the basis of
 19 that determination and if that affiliate is con-
 20 trolled in fact by that foreign person.

21 ~~(b) CONSULTATIONS WITH AND ACTIONS BY FOR-~~
 22 EIGN GOVERNMENT OF JURISDICTION.—

23 ~~(1) CONSULTATIONS.~~—If the President makes
 24 the determinations described in subsection ~~(a)(1)~~
 25 with respect to a foreign person, Congress urges the

1 President to initiate consultations immediately with
2 the government with primary jurisdiction over that
3 foreign person with respect to the imposition of
4 sanctions pursuant to this section.

5 (2) ACTIONS BY GOVERNMENT OF JURISDIC-
6 TION.—In order to pursue such consultations with
7 that government, the President may delay imposition
8 of sanctions pursuant to this section for a period of
9 up to 90 days. Following the consultations, the
10 President shall impose sanctions unless the Presi-
11 dent determines and certifies to Congress that gov-
12 ernment has taken specific and effective actions, in-
13 cluding appropriate penalties, to terminate the in-
14 volvement of the foreign person in the activities de-
15 scribed in subsection (a)(1). The President may
16 delay imposition of sanctions for an additional pe-
17 riod of up to 90 days if the President determines
18 and certifies to Congress that government is in the
19 process of taking the actions described in the pre-
20 ceeding sentence.

21 (3) REPORT TO CONGRESS.—The President
22 shall report to Congress, not later than 90 days
23 after making a determination under subsection
24 (a)(1), on the status of consultations with the appro-
25 priate government under this subsection, and the

1 basis for any determination under paragraph (2) of
 2 this subsection that such government has taken spe-
 3 cific corrective actions.

4 ~~(c) SANCTIONS.—~~

5 ~~(1) DESCRIPTION OF SANCTIONS.—~~The sanc-
 6 tions to be imposed pursuant to subsection (a)(1)
 7 are, except as provided in paragraph (2) of this sub-
 8 section, the following:

9 ~~(A) PROCUREMENT SANCTION.—~~The
 10 United States Government shall not procure, or
 11 enter into any contract for the procurement of,
 12 any goods or services from any person described
 13 in subsection (a)(3).

14 ~~(B) IMPORT SANCTIONS.—~~The importation
 15 into the United States of products produced by
 16 any person described in subsection (a)(3) shall
 17 be prohibited.

18 ~~(2) EXCEPTIONS.—~~The President shall not be
 19 required to apply or maintain sanctions under this
 20 section—

21 ~~(A) in the case of procurement of defense~~
 22 ~~articles or defense services—~~

23 ~~(i) under existing contracts or sub-~~
 24 ~~contracts, including the exercise of options~~

1 for production quantities to satisfy United
2 States operational military requirements;

3 (ii) if the President determines that
4 the person or other entity to which the
5 sanctions would otherwise be applied is a
6 sole source supplier of the defense articles
7 or services; that the defense articles or
8 services are essential; and that alternative
9 sources are not readily or reasonably avail-
10 able; or

11 (iii) if the President determines that
12 such articles or services are essential to the
13 national security under defense coproduc-
14 tion agreements;

15 (B) to products or services provided under
16 contracts entered into before the date on which
17 the President publishes his intention to impose
18 sanctions;

19 (C) to—

20 (i) spare parts,

21 (ii) component parts, but not finished
22 products; essential to United States prod-
23 ucts or production; or

24 (iii) routine servicing and mainte-
25 nance of products; to the extent that alter-

1 native sources are not readily or reason-
2 ably available;

3 ~~(D)~~ to information and technology essen-
4 tial to United States products or production; or
5 ~~(E)~~ to medical or other humanitarian
6 items.

7 ~~(d)~~ TERMINATION OF SANCTIONS.—The sanctions
8 imposed pursuant to this section shall apply for a period
9 of at least 12 months following the imposition of sanctions
10 and shall cease to apply thereafter only if the President
11 determines and certifies to the Congress that reliable in-
12 formation indicates that the foreign person with respect
13 to which the determination was made under subsection
14 ~~(a)(1)~~ has ceased to aid or abet any foreign government,
15 project, or entity in its efforts to acquire chemical or bio-
16 logical weapons capability as described in that subsection.

17 ~~(e)~~ WAIVER.—

18 ~~(1)~~ CRITERION FOR WAIVER.—The President
19 may waive the application of any sanction imposed
20 on any person pursuant to this section, after the end
21 of the 12-month period beginning on the date on
22 which that sanction was imposed on that person, if
23 the President determines and certifies to Congress
24 that such waiver is important to the national secu-
25 rity interests of the United States.

1 ~~(2) NOTIFICATION OF AND REPORT TO CON-~~
 2 ~~GRESS.—If the President decides to exercise the~~
 3 ~~waiver authority provided in paragraph (1), the~~
 4 ~~President shall so notify the Congress not less than~~
 5 ~~20 days before the waiver takes effect. Such notifica-~~
 6 ~~tion shall include a report fully articulating the ra-~~
 7 ~~tionale and circumstances which led the President to~~
 8 ~~exercise the waiver authority.~~

9 ~~(f) DEFINITION OF FOREIGN PERSON.—For the pur-~~
 10 ~~poses of this section, the term “foreign person” means—~~

11 ~~(1) an individual who is not a citizen of the~~
 12 ~~United States or an alien admitted for permanent~~
 13 ~~residence to the United States; or~~

14 ~~(2) a corporation, partnership, or other entity~~
 15 ~~which is created or organized under the laws of a~~
 16 ~~foreign country or which has its principal place of~~
 17 ~~business outside the United States.~~

18 **SEC. 607. ENFORCEMENT.**

19 ~~(a) GENERAL AUTHORITY AND DESIGNATION.—~~

20 ~~(1) POLICY GUIDANCE ON ENFORCEMENT.—~~

21 ~~The Secretary, in consultation with the Secretary of~~
 22 ~~the Treasury and the heads of other departments~~
 23 ~~and agencies that the Secretary considers appro-~~
 24 ~~priate, shall be responsible for providing policy guid-~~
 25 ~~ance on the enforcement of this Act.~~

1 (2) GENERAL AUTHORITIES.—

2 (A) EXERCISE OF AUTHORITY.—To the ex-
3 tent necessary or appropriate to the enforce-
4 ment of this Act, officers or employees of the
5 Department designated by the Secretary, offi-
6 cers and employees of the United States Cus-
7 toms Service designated by the Commissioner of
8 Customs, and officers and employees of any
9 other department or agency designated by the
10 head of a department or agency exercising func-
11 tions under this Act, may exercise the enforce-
12 ment authority under paragraph (3).

13 (B) CUSTOMS SERVICE.—In carrying out
14 enforcement authority under paragraph (3), the
15 Commissioner of Customs and employees of the
16 United States Customs Services designated by
17 the Commissioner may make investigations
18 within or outside the United States and at
19 ports of entry into or exit from the United
20 States where officers of the United States Cus-
21 toms Service are authorized by law to carry out
22 law enforcement responsibilities. Subject to
23 paragraph (3), the United States Customs
24 Service is authorized, in the enforcement of this
25 Act, to search, detain (after search), and seize

1 commodities or technology at the ports of entry
2 into or exit from the United States where offi-
3 cers of the United States Customs Service are
4 authorized by law to conduct searches, deten-
5 tions, and seizures, and at the places outside
6 the United States where the United States Cus-
7 toms Service, pursuant to agreement or other
8 arrangement with other countries, is authorized
9 to perform enforcement activities.

10 (C) OTHER EMPLOYEES.—In carrying out
11 enforcement authority under paragraph (3), the
12 Secretary and officers and employees of the De-
13 partment designated by the Secretary may
14 make investigations within the United States,
15 and may conduct, outside the United States,
16 pre-license and post-shipment verifications of
17 controlled items and investigations in the en-
18 forcement of section 602. The Secretary and of-
19 ficers and employees of the Department des-
20 ignated by the Secretary are authorized to
21 search, detain (after search), and seize items at
22 places within the United States other than
23 ports referred to in subparagraph (B). The
24 search, detention (after search), or seizure of
25 items at the ports and places referred to in sub-

1 paragraph (B) may be conducted by officers
 2 and employees of the Department only with the
 3 concurrence of the Commissioner of Customs or
 4 a person designated by the Commissioner.

5 (D) AGREEMENTS AND ARRANGEMENTS.—

6 The Secretary and the Commissioner of Cus-
 7 toms may enter into agreements and arrange-
 8 ments for the enforcement of this Act, including
 9 foreign investigations and information ex-
 10 change.

11 (3) SPECIFIC AUTHORITIES.—

12 (A) ACTIONS BY ANY DESIGNATED PER-
 13 SONNEL.—Any officer or employee designated
 14 under paragraph (2), in carrying out the en-
 15 forcement authority under this Act, may do the
 16 following:

17 (i) Make investigations of, obtain in-
 18 formation from, make inspection of any
 19 books, records, or reports (including any
 20 writings required to be kept by the Sec-
 21 retary), premises, or property of, and take
 22 the sworn testimony of, any person.

23 (ii) Administer oaths or affirmations,
 24 and by subpoena require any person to ap-
 25 pear and testify or to appear and produce

1 books, records, and other writings, or both.

2 In the case of contumacy by, or refusal to

3 obey a subpoena issued to, any such per-

4 son, a district court of the United States,

5 on request of the Attorney General and

6 after notice to any such person and a hear-

7 ing, shall have jurisdiction to issue an

8 order requiring such person to appear and

9 give testimony or to appear and produce

10 books, records, and other writings, or both.

11 Any failure to obey such order of the court

12 may be punished by such court as a con-

13 tempt thereof. The attendance of witnesses

14 and the production of documents provided

15 for in this clause may be required from

16 any State, the District of Columbia, or in

17 any territory of the United States at any

18 designated place. Witnesses subpoenaed

19 under this subsection shall be paid the

20 same fees and mileage allowance as paid

21 witnesses in the district courts of the

22 United States.

23 (B) ACTIONS BY OFFICE OF EXPORT EN-

24 FORCEMENT AND CUSTOMS SERVICE PER-

25 SONNEL.—

1 (i) OFFICE OF EXPORT ENFORCE-
2 MENT AND CUSTOMS SERVICE PER-
3 SONNEL.—Any officer or employee of the
4 Office of Export Enforcement of the De-
5 partment of Commerce (in this Act re-
6 ferred to as “OEE”) who is designated by
7 the Secretary under paragraph (2); and
8 any officer or employee of the United
9 States Customs Service who is designated
10 by the Commissioner of Customs under
11 paragraph (2); may do the following in
12 carrying out the enforcement authority
13 under this Act:

14 (I) Execute any warrant or other
15 process issued by a court or officer of
16 competent jurisdiction with respect to
17 the enforcement of this Act.

18 (II) Make arrests without war-
19 rant for any violation of this Act com-
20 mitted in his or her presence or view,
21 or if the officer or employee has prob-
22 able cause to believe that the person
23 to be arrested has committed, is com-
24 mitting, or is about to commit such a
25 violation.

1 (III) ~~Carry firearms.~~

2 (ii) ~~OEE PERSONNEL.~~—Any officer
3 and employee of the ~~OEE~~ designated by
4 the Secretary under paragraph (2) shall
5 exercise the authority set forth in clause (i)
6 pursuant to guidelines approved by the At-
7 torney General.

8 (C) ~~OTHER ACTIONS BY CUSTOMS SERVICE~~
9 ~~PERSONNEL.~~—Any officer or employee of the
10 United States Customs Service designated by
11 the Commissioner of Customs under paragraph
12 (2) may do the following in carrying out the en-
13 forcement authority under this Act.

14 (i) Stop, search, and examine a vehi-
15 cle, vessel, aircraft, or person on which or
16 whom the officer or employee has reason-
17 able cause to suspect there is any item
18 that has been, is being, or is about to be
19 exported from or transited through the
20 United States in violation of this Act.

21 (ii) Detain and search any package or
22 container in which the officer or employee
23 has reasonable cause to suspect there is
24 any item that has been, is being, or is
25 about to be exported from or transited

1 through the United States in violation of
2 this Act.

3 (iii) ~~Detain (after search) or seize any~~
4 ~~item, for purposes of securing for trial or~~
5 ~~forfeiture to the United States, on or~~
6 ~~about such vehicle, vessel, aircraft, or per-~~
7 ~~son or in such package or container, if the~~
8 ~~officer or employee has probable cause to~~
9 ~~believe the item has been, is being, or is~~
10 ~~about to be exported from or transited~~
11 ~~through the United States in violation of~~
12 ~~this Act.~~

13 (4) ~~OTHER AUTHORITIES NOT AFFECTED.—The~~
14 ~~authorities conferred by this section are in addition~~
15 ~~to any authorities conferred under other laws.~~

16 (b) ~~FORFEITURE.—~~

17 (1) ~~IN GENERAL.—Any tangible items lawfully~~
18 ~~seized under subsection (a) by designated officers or~~
19 ~~employees shall be subject to forfeiture to the United~~
20 ~~States.~~

21 (2) ~~APPLICABLE LAWS.—Those provisions of~~
22 ~~law relating to—~~

23 (A) ~~the seizure, summary and judicial for-~~
24 ~~feiture, and condemnation of property for viola-~~
25 ~~tions of the customs laws;~~

1 (B) the disposition of such property or the
2 proceeds from the sale thereof;

3 (C) the remission or mitigation of such for-
4 feitures; and

5 (D) the compromise of claims,
6 shall apply to seizures and forfeitures incurred, or
7 alleged to have been incurred, under the provisions
8 of this subsection, insofar as applicable and not in-
9 consistent with this Act.

10 (3) FORFEITURES UNDER CUSTOMS LAWS.—

11 Duties that are imposed upon the customs officer or
12 any other person with respect to the seizure and for-
13 feiture of property under the customs laws may be
14 performed with respect to seizures and forfeitures of
15 property under this subsection by the Secretary or
16 any officer or employee of the Department that may
17 be authorized or designated for that purpose by the
18 Secretary, or, upon the request of the Secretary, by
19 any other agency that has authority to manage and
20 dispose of seized property.

21 (c) REFERRAL OF CASES.—All cases involving viola-
22 tions of this Act shall be referred to the Secretary for pur-
23 poses of determining civil penalties and administrative
24 sanctions under section 603 or to the Attorney General

1 for criminal action in accordance with this Act or to both
 2 the Secretary and the Attorney General.

3 (d) UNDERCOVER INVESTIGATION OPERATIONS.—

4 (1) USE OF FUNDS.—With respect to any un-
 5 derecover investigative operation conducted by the
 6 OEE that is necessary for the detection and pros-
 7 ecution of violations of this Act—

8 (A) funds made available for export en-
 9 forcement under this Act may be used to pur-
 10 chase property, buildings, and other facilities,
 11 and to lease equipment, conveyances, and space
 12 within the United States, without regard to sec-
 13 tions 1341 and 3324 of title 31, United States
 14 Code, the third undesignated paragraph under
 15 the heading of “miscellaneous” of the Act of
 16 March 3, 1877, (40 U.S.C. 34), sections
 17 3732(a) and 3741 of the Revised Statutes of
 18 the United States (41 U.S.C. 11(a) and 22),
 19 subsections (a) and (c) of section 304 of the
 20 Federal Property and Administrative Services
 21 Act of 1949 (41 U.S.C. 254 (a) and (c)), and
 22 section 305 of the Federal Property and Ad-
 23 ministrative Services Act of 1949 (41 U.S.C.
 24 255);

1 ~~(B)~~ funds made available for export en-
2 forcement under this Act may be used to estab-
3 lish or to acquire proprietary corporations or
4 business entities as part of an undercover oper-
5 ation, and to operate such corporations or busi-
6 ness entities on a commercial basis, without re-
7 gard to sections ~~1341~~, ~~3324~~, and 9102 of title
8 31, United States Code;

9 ~~(C)~~ funds made available for export en-
10 forcement under this Act and the proceeds from
11 undercover operations may be deposited in
12 banks or other financial institutions without re-
13 gard to the provisions of section 648 of title 18,
14 United States Code, and section ~~3302~~ of title
15 31, United States Code; and

16 ~~(D)~~ the proceeds from undercover oper-
17 ations may be used to offset necessary and rea-
18 sonable expenses incurred in such operations
19 without regard to the provisions of section ~~3302~~
20 of title 31, United States Code,

21 if the Director of OEE (or an officer or employee
22 designated by the Director) certifies, in writing, that
23 the action authorized by subparagraph (A), (B), (C),
24 or ~~(D)~~ for which the funds would be used is nec-
25 essary for the conduct of the undercover operation.

1 (2) DISPOSITION OF BUSINESS ENTITIES.—If a
2 corporation or business entity established or ac-
3 quired as part of an undercover operation has a net
4 value of more than \$250,000 and is to be liquidated,
5 sold, or otherwise disposed of, the Director of OEE
6 shall report the circumstances to the Secretary and
7 the Comptroller General of the United States as
8 much in advance of such disposition as the Director
9 of the OEE (or the Director's designee) determines
10 is practicable. The proceeds of the liquidation, sale,
11 or other disposition, after obligations incurred by the
12 corporation or business enterprise are met, shall be
13 deposited in the Treasury of the United States as
14 miscellaneous receipts. Any property or equipment
15 purchased pursuant to paragraph (1) may be re-
16 tained for subsequent use in undercover operations
17 under this section. When such property or equip-
18 ment is no longer needed, it shall be considered sur-
19 plus and disposed of as surplus government prop-
20 erty.

21 (3) DEPOSIT OF PROCEEDS.—As soon as the
22 proceeds from an OEE undercover investigative op-
23 eration with respect to which an action is authorized
24 and carried out under this subsection are no longer
25 needed for the conduct of such operation, the pro-

1 ceeds or the balance of the proceeds remaining at
2 the time shall be deposited into the Treasury of the
3 United States as miscellaneous receipts.

4 (4) AUDIT AND REPORT.—

5 (A) AUDIT.—The Director of OEE shall
6 conduct a detailed financial audit of each closed
7 OEE undercover investigative operation and
8 shall submit the results of the audit in writing
9 to the Secretary. Not later than 180 days after
10 an undercover operation is closed, the Secretary
11 shall submit to Congress a report on the results
12 of the audit.

13 (B) REPORT.—The Secretary shall submit
14 annually to Congress a report, which may be in-
15 cluded in the annual report under section 801,
16 specifying the following information:

17 (i) The number of undercover inves-
18 tigative operations pending as of the end of
19 the period for which such report is sub-
20 mitted.

21 (ii) The number of undercover inves-
22 tigative operations commenced in the 1-
23 year period preceding the period for which
24 such report is submitted.

(iii) The number of undercover investigative operations closed in the 1-year period preceding the period for which such report is submitted and, with respect to each such closed undercover operation, the results obtained and any civil claims made with respect to the operation.

(5) DEFINITIONS.—For purposes of paragraph (4)—

(A) the term “closed”, with respect to an undercover investigative operation, refers to the earliest point in time at which all criminal proceedings (other than appeals) pursuant to the investigative operation are concluded, or covert activities pursuant to such operation are concluded, whichever occurs later; and

(B) the terms “undercover investigative operation” and “undercover operation” mean any undercover investigative operation conducted by the OEE—

(i) in which the gross receipts (excluding interest earned) exceed \$25,000, or expenditures (other than expenditures for salaries of employees) exceed \$75,000, and

1 (ii) which is exempt from section ~~3302~~
 2 or 9102 of title 31, United States Code,
 3 except that clauses (i) and (ii) shall not
 4 apply with respect to the report to Con-
 5 gress required by paragraph (4)(B).

6 (c) WIRETAPS.—

7 (1) AUTHORITY.—Interceptions of communica-
 8 tions in accordance with section 2516 of title 18,
 9 United States Code, are authorized to further the
 10 enforcement of this Act.

11 (2) CONFORMING AMENDMENT.—Section
 12 2516(1) of title 18, United States Code, is amended
 13 by adding at the end the following:

14 “(q)(i) any violation of, or conspiracy to
 15 violate, the Export Administration Act of 2001
 16 or the Export Administration Act of 1979.”.

17 (f) POST-SHIPMENT VERIFICATION.—

18 (1) IN GENERAL.—The Secretary shall target
 19 post-shipment verifications to exports involving the
 20 greatest risk to national security including, but not
 21 limited to, exports of high performance computers.

22 (2) REPEAL.—Section 1213 of the National
 23 Defense Authorization Act for Fiscal Year 1998 is
 24 repealed.

1 (g) REFUSAL TO ALLOW POST-SHIPMENT
2 VERIFICATION.—

3 (1) IN GENERAL.—If an end-user refuses to
4 allow post-shipment verification of a controlled item;
5 the Secretary shall deny a license for the export of
6 any controlled item to such end-user until such post-
7 shipment verification occurs.

8 (2) RELATED PERSONS.—The Secretary may
9 exercise the authority under paragraph (1) with re-
10 spect to any person related through affiliation, own-
11 ership, control, or position of responsibility, to any
12 end-user refusing to allow post-shipment verification
13 of a controlled item.

14 (3) REFUSAL BY COUNTRY.—If the country in
15 which the end-user is located refuses to allow post-
16 shipment verification of a controlled item, the Sec-
17 retary may deny a license for the export of that item
18 or any substantially identical or directly competitive
19 item or class of items to all end-users in that coun-
20 try until such post-shipment verification is allowed.

21 (h) AWARD OF COMPENSATION; PATRIOT PROVI-
22 SION.—

23 (1) IN GENERAL.—If—

24 (A) any person, who is not an employee or
25 officer of the United States, furnishes to a

1 United States attorney, to the Secretary of the
 2 Treasury or the Secretary, or to appropriate of-
 3 ficials in the Department of the Treasury or the
 4 Department of Commerce, original information
 5 concerning a violation of this Act or any regula-
 6 tion, order, or license issued under this Act,
 7 which is being, or has been, perpetrated or con-
 8 templated by any other person and in which the
 9 person furnishing the information has not par-
 10 ticipated, and

11 (B) such information leads to the recovery
 12 of any criminal fine, civil penalty, or forfeiture;
 13 the Secretary and the Commissioner of Customs,
 14 may, in the sole discretion of the Secretary or the
 15 Commissioner, award and pay an amount that does
 16 not exceed 25 percent of the net amount recovered.

17 (2) DOLLAR LIMITATION.—The amount award-
 18 ed and paid to any person under this section may
 19 not exceed \$250,000 for any case.

20 (3) SOURCE OF PAYMENT.—The amount paid
 21 under this section shall be paid out of any penalties,
 22 forfeitures, or appropriated funds.

23 (i) FREIGHT FORWARDERS BEST PRACTICES PRO-
 24 GRAM AUTHORIZATION.—There is authorized to be appro-
 25 priated for the Department of Commerce \$2,500,000 and

1 such sums as may be necessary to hire 20 additional em-
2 ployees to assist United States freight forwarders and
3 other interested parties in developing and implementing,
4 on a voluntary basis, a “best practices” program to ensure
5 that exports of controlled items are undertaken in compli-
6 ance with this Act.

7 (j) ~~END-USE VERIFICATION AUTHORIZATION.—~~

8 (1) ~~IN GENERAL.—~~There is authorized to be
9 appropriated for the Department of Commerce
10 \$4,500,000 and such sums as may be necessary to
11 hire 10 additional overseas investigators to be posted
12 in the People’s Republic of China, the Russian Fed-
13 eration, the Hong Kong Special Administrative Re-
14 gion, the Republic of India, Singapore, Egypt, and
15 Taiwan, or any other place the Secretary deems ap-
16 propriate, for the purpose of verifying the end use
17 of high-risk, dual-use technology.

18 (2) ~~REPORT.—~~Not later than 2 years after the
19 date of enactment of this Act and annually there-
20 after, the Department shall, in its annual report to
21 Congress on export controls, include a report on the
22 effectiveness of the end-use verification activities au-
23 thorized under subsection (a). The report shall in-
24 clude the following information:

1 (A) The activities of the overseas investiga-
2 tors of the Department.

3 (B) The types of goods and technologies
4 that were subject to end-use verification.

5 (C) The ability of the Department's inves-
6 tigators to detect the illegal transfer of high
7 risk, dual-use goods and technologies.

8 (3) ENHANCEMENTS.—In addition to the au-
9 thorization provided in paragraph (1), there is au-
10 thorized to be appropriated for the Department of
11 Commerce \$5,000,000 to enhance its program for
12 verifying the end use of items subject to controls
13 under this Act.

14 (k) ENHANCED COOPERATION WITH UNITED
15 STATES CUSTOMS SERVICE.—Consistent with the pur-
16 poses of this Act, the Secretary is authorized to undertake,
17 in cooperation with the United States Customs Service,
18 such measures as may be necessary or required to enhance
19 the ability of the United States to detect unlawful exports
20 and to enforce violations of this Act.

21 (l) REFERENCE TO ENFORCEMENT.—For purposes
22 of this section, a reference to the enforcement of this Act
23 or to a violation of this Act includes a reference to the
24 enforcement or a violation of any regulation, license, or
25 order issued under this Act.

1 (m) AUTHORIZATION FOR EXPORT LICENSING AND
 2 ENFORCEMENT COMPUTER SYSTEM.—There is author-
 3 ized to be appropriated for the Department \$5,000,000
 4 and such other sums as may be necessary for planning,
 5 design, and procurement of a computer system to replace
 6 the Department’s primary export licensing and computer
 7 enforcement system.

8 (n) AUTHORIZATION FOR BUREAU OF EXPORT AD-
 9 MINISTRATION.—The Secretary may authorize, without
 10 fiscal year limitation, the expenditure of funds transferred
 11 to, paid to, received by, or made available to the Bureau
 12 of Export Administration as a reimbursement in accord-
 13 ance with section 9703 of title 31, United States Code
 14 (as added by Public Law 102–393). The Secretary may
 15 also authorize, without fiscal year limitation, the expendi-
 16 ture of funds transferred to, paid to, received by, or made
 17 available to the Bureau of Export Administration as a re-
 18 imbursement from the Department of Justice Assets For-
 19 feiture Fund in accordance with section 524 of title 28,
 20 United States Code.

21 (o) AMENDMENTS TO TITLE 31.—

22 (1) Section 9703(a) of title 31, United States
 23 Code (as added by Public Law 102–393) is amended
 24 by striking “or the United States Coast Guard” and
 25 inserting “, the United States Coast Guard, or the

1 Bureau of Export Administration of the Department
2 of Commerce”.

3 ~~(2) Section 9703(a)(2)(B)(i) of title 31, United~~
4 ~~States Code is amended (as added by Public Law~~
5 ~~102-393)—~~

6 (A) by striking “or” at the end of sub-
7 clause (I);

8 (B) by inserting “or” at the end of sub-
9 clause (II); and

10 (C) by inserting at the end, the following
11 new subclause:

12 “(III) a violation of the Export
13 Administration Act of 1979, the Ex-
14 port Administration Act of 2001, or
15 any regulation, license, or order issued
16 under those Acts;”.

17 ~~(3) Section 9703(p)(1) of title 31, United~~
18 ~~States Code (as added by Public Law 102-393) is~~
19 ~~amended by adding at the end the following: “In ad-~~
20 ~~dition, for purposes of this section, the Bureau of~~
21 ~~Export Administration of the Department of Com-~~
22 ~~merce shall be considered to be a Department of the~~
23 ~~Treasury law enforcement organization.”.~~

24 ~~(p) AUTHORIZATION FOR LICENSE REVIEW OFFI-~~
25 ~~CERS.—~~

1 (1) IN GENERAL.—There is authorized to be
2 appropriated to the Department of Commerce
3 ~~\$2,000,000~~ to hire additional license review officers.

4 (2) TRAINING.—There is authorized to be ap-
5 propriated to the Department of Commerce
6 ~~\$2,000,000~~ to conduct professional training of li-
7 cense review officers, auditors, and investigators
8 conducting post-shipment verification checks. These
9 funds shall be used to—

10 (A) train and certify, through a formal
11 program, new employees entering these posi-
12 tions for the first time; and

13 (B) the ongoing professional training of ex-
14 perienced employees on an as needed basis.

15 (c) AUTHORIZATION.—There are authorized to be ap-
16 propriated to the Department of Commerce to carry out
17 the purposes of this Act—

18 (1) ~~\$72,000,000~~ for the fiscal year 2002, of
19 which no less than ~~\$27,701,000~~ shall be used for
20 compliance and enforcement activities;

21 (2) ~~\$73,000,000~~ for the fiscal year 2003, of
22 which no less than ~~\$28,312,000~~ shall be used for
23 compliance and enforcement activities;

1 ~~(3)~~ \$74,000,000 for the fiscal year 2004, of
 2 which no less than \$28,939,000 shall be used for
 3 compliance and enforcement activities;

4 ~~(4)~~ \$76,000,000 for the fiscal year 2005, of
 5 which no less than \$29,582,000 shall be used for
 6 compliance and enforcement activities; and

7 ~~(5)~~ such additional amounts, for each such fis-
 8 cal year, as may be necessary for increases in salary,
 9 pay, retirement, other employee benefits authorized
 10 by law, and other nondiscretionary costs.

11 **SEC. 608. ADMINISTRATIVE PROCEDURE.**

12 ~~(a) EXEMPTIONS FROM ADMINISTRATIVE PROCE-~~
 13 ~~DURE.—~~Except as provided in this section, the functions
 14 exercised under this Act are excluded from the operation
 15 of sections 551, 553 through 559, and 701 through 706
 16 of title 5, United States Code.

17 ~~(b) PROCEDURES RELATING TO CIVIL PENALTIES~~
 18 ~~AND SANCTIONS.—~~

19 ~~(1) ADMINISTRATIVE PROCEDURES.—~~Any ad-
 20 ministrative sanction imposed under section 603
 21 may be imposed only after notice and opportunity
 22 for an agency hearing on the record in accordance
 23 with sections 554 through 557 of title 5, United
 24 States Code. The imposition of any such administra-
 25 tive sanction shall be subject to judicial review in ac-

1 cordance with sections 701 through 706 of title 5,
 2 United States Code.

3 ~~(2) AVAILABILITY OF CHARGING LETTER.—Any~~
 4 charging letter or other document initiating adminis-
 5 trative proceedings for the imposition of sanctions
 6 for violations of the regulations issued under section
 7 602 shall be made available for public inspection and
 8 copying.

9 ~~(c) COLLECTION.—If any person fails to pay a civil~~
 10 penalty imposed under section 602, the Secretary may ask
 11 the Attorney General to commence a civil action in an ap-
 12 propriate district court of the United States to recover the
 13 amount imposed (plus interest at currently prevailing
 14 rates from the date of the final order). No such action
 15 may be commenced more than 5 years after the order im-
 16 posing the civil penalty becomes final. In such an action,
 17 the validity, amount, and appropriateness of such penalty
 18 shall not be subject to review.

19 ~~(d) IMPOSITION OF TEMPORARY DENIAL ORDERS.—~~

20 ~~(1) GROUNDS FOR IMPOSITION.—In any case in~~
 21 which there is reasonable cause to believe that a per-
 22 son is engaged in or is about to engage in any act
 23 or practice which constitutes or would constitute a
 24 violation of this Act, or any regulation, order, or li-
 25 cense issued under this Act, including any diversion

1 of goods or technology from an authorized end use
2 or end user, and in any case in which a criminal in-
3 dictment has been returned against a person alleging
4 a violation of this Act or any of the statutes listed
5 in section 603, the Secretary may, without a hear-
6 ing, issue an order temporarily denying that person's
7 United States export privileges (hereafter in this
8 subsection referred to as a "temporary denial
9 order"). A temporary denial order shall be effective
10 for such period (not in excess of 180 days) as the
11 Secretary specifies in the order, but may be renewed
12 by the Secretary, following notice and an oppor-
13 tunity for a hearing, for additional periods of not
14 more than 180 days each.

15 (2) ADMINISTRATIVE APPEALS.—The person or
16 persons subject to the issuance or renewal of a tem-
17 porary denial order may appeal the issuance or re-
18 newal of the temporary denial order, supported by
19 briefs and other material, to an administrative law
20 judge who shall, within 15 working days after the
21 appeal is filed, issue a decision affirming, modifying,
22 or vacating the temporary denial order. The tem-
23 porary denial order shall be affirmed if it is shown
24 that—

1 (A) there is reasonable cause to believe
 2 that the person subject to the order is engaged
 3 in or is about to engage in any act or practice
 4 that constitutes or would constitute a violation
 5 of this Act, or any regulation, order, or license
 6 issued under this Act; or

7 (B) a criminal indictment has been re-
 8 turned against the person subject to the order
 9 alleging a violation of this Act or any of the
 10 statutes listed in section 603.

11 The decision of the administrative law judge shall be
 12 final unless, within 10 working days after the date
 13 of the administrative law judge's decision, an appeal
 14 is filed with the Secretary. On appeal, the Secretary
 15 shall either affirm, modify, reverse, or vacate the de-
 16 cision of the administrative law judge by written
 17 order within 10 working days after receiving the ap-
 18 peal. The written order of the Secretary shall be
 19 final and is not subject to judicial review, except as
 20 provided in paragraph (3). The materials submitted
 21 to the administrative law judge and the Secretary
 22 shall constitute the administrative record for pur-
 23 poses of review by the court.

24 (3) COURT APPEALS.—An order of the Sec-
 25 retary affirming, in whole or in part, the issuance or

1 renewal of a temporary denial order may, within 15
2 days after the order is issued, be appealed by a per-
3 son subject to the order to the United States Court
4 of Appeals for the District of Columbia Circuit,
5 which shall have the jurisdiction of the appeal. The
6 court may review only those issues necessary to de-
7 termine whether the issuance of the temporary de-
8 nial order was based on reasonable cause to believe
9 that the person subject to the order was engaged
10 in or was about to engage in any act or practice
11 that constitutes or would constitute a violation of
12 this title, or any regulation, order, or license issued
13 under this Act, or whether a criminal indictment has
14 been returned against the person subject to the
15 order alleging a violation of this Act or of any of
16 the statutes listed in section 603. The court shall
17 vacate the Secretary's order if the court finds that
18 the Secretary's order is arbitrary, capricious, an
19 abuse of discretion, or otherwise not in accordance
20 with law.

21 (c) LIMITATIONS ON REVIEW OF CLASSIFIED INFOR-
22 MATION.—Any classified information that is included in
23 the administrative record that is subject to review pursu-
24 ant to subsection (b)(1) or (d)(3) may be reviewed by the
25 court only on an ex parte basis and in camera.

1 **TITLE VII—EXPORT CONTROL**
 2 **AUTHORITY AND REGULATIONS**

3 **SEC. 701. EXPORT CONTROL AUTHORITY AND REGULA-**
 4 **TIONS.**

5 (a) **EXPORT CONTROL AUTHORITY.—**

6 (1) **IN GENERAL.**—Unless otherwise reserved to
 7 the President or a department (other than the De-
 8 partment) or agency of the United States, all power,
 9 authority, and discretion conferred by this Act shall
 10 be exercised by the Secretary.

11 (2) **DELEGATION OF FUNCTIONS OF THE SEC-**
 12 **RETARY.**—The Secretary may delegate any function
 13 under this Act, unless otherwise provided, to the
 14 Under Secretary of Commerce for Export Adminis-
 15 tration or to any other officer of the Department.

16 (b) **UNDER SECRETARY OF COMMERCE; ASSISTANT**
 17 **SECRETARIES.—**

18 (1) **UNDER SECRETARY OF COMMERCE.**—There
 19 shall be within the Department an Under Secretary
 20 of Commerce for Export Administration (in this sec-
 21 tion referred to as the “Under Secretary”) who shall
 22 be appointed by the President, by and with the ad-
 23 vice and consent of the Senate. The Under Secretary
 24 shall carry out all functions of the Secretary under

1 this Act and other provisions of law relating to na-
2 tional security, as the Secretary may delegate.

3 ~~(2) ADDITIONAL ASSISTANT SECRETARIES.—In~~
4 addition to the number of Assistant Secretaries oth-
5 erwise authorized for the Department of Commerce,
6 there shall be within the Department of Commerce
7 the following Assistant Secretaries of Commerce:

8 (A) An Assistant Secretary for Export Ad-
9 ministration who shall be appointed by the
10 President, by and with the advice and consent
11 of the Senate, and who shall assist the Sec-
12 retary and the Under Secretary in carrying out
13 functions relating to export listing and licens-
14 ing.

15 (B) An Assistant Secretary for Export En-
16 forcement who shall be appointed by the Presi-
17 dent, by and with the advice and consent of the
18 Senate, and who shall assist the Secretary and
19 the Under Secretary in carrying out functions
20 relating to export enforcement.

21 ~~(c) ISSUANCE OF REGULATIONS.—~~

22 ~~(1) IN GENERAL.—~~The President and the Sec-
23 retary may issue such regulations as are necessary
24 to carry out this Act. Any such regulations the pur-
25 pose of which is to carry out title II or title III may

1 be issued only after the regulations are submitted
 2 for review to such departments or agencies as the
 3 President considers appropriate. The Secretary shall
 4 consult with the appropriate export control advisory
 5 committee appointed under section 105(f) in formu-
 6 lating regulations under this title. The second sen-
 7 tence of this subsection does not require the concur-
 8 rence or approval of any official, department, or
 9 agency to which such regulations are submitted.

10 (2) AMENDMENTS TO REGULATIONS.—If the
 11 Secretary proposes to amend regulations issued
 12 under this Act, the Secretary shall report to the
 13 Committee on Banking, Housing, and Urban Affairs
 14 of the Senate and the Committee on International
 15 Relations of the House of Representatives on the in-
 16 tent and rationale of such amendments. Such report
 17 shall evaluate the cost and burden to the United
 18 States exporters of the proposed amendments in re-
 19 lation to any enhancement of licensing objectives.
 20 The Secretary shall consult with the appropriate ex-
 21 port control advisory committees appointed under
 22 section 105(f) in amending regulations issued under
 23 this Act.

24 **SEC. 702. CONFIDENTIALITY OF INFORMATION.**

25 (a) EXEMPTIONS FROM DISCLOSURE.—

1 ~~(1)~~ INFORMATION OBTAINED ON OR BEFORE
2 JUNE 30, 1980.—Except as otherwise provided by the
3 third sentence of section 602(c)(2), information ob-
4 tained under the Export Administration Act of
5 1979, or any predecessor statute, on or before June
6 30, 1980, which is deemed confidential, including
7 Shipper's Export Declarations, or with respect to
8 which a request for confidential treatment is made
9 by the person furnishing such information, shall not
10 be subject to disclosure under section 552 of title 5,
11 United States Code, and such information shall not
12 be published or disclosed, unless the Secretary deter-
13 mines that the withholding thereof is contrary to the
14 national interest.

15 ~~(2)~~ INFORMATION OBTAINED AFTER JUNE 30,
16 1980.—Except as otherwise provided by the third
17 sentence of section 13(b)(2) of the Export Adminis-
18 tration Act of 1979, information obtained under this
19 Act, under the Export Administration Act of 1979
20 after June 30, 1980, or under the Export Adminis-
21 tration regulations as maintained and amended
22 under the authority of the International Emergency
23 Economic Powers Act (50 U.S.C. 1706), may be
24 withheld from disclosure only to the extent permitted
25 by statute, except that information submitted, ob-

1 tained, or considered in connection with an applica-
2 tion for an export license or other export authoriza-
3 tion (or recordkeeping or reporting requirement)
4 under the Export Administration Act of 1979, under
5 this Act, or under the Export Administration regula-
6 tions as maintained and amended under the author-
7 ity of the International Emergency Economic Pow-
8 ers Act (50 U.S.C. 1706), including—

9 (A) the export license or other export au-
10 thorization itself,

11 (B) classification requests described in sec-
12 tion 501(h),

13 (C) information or evidence obtained in the
14 course of any investigation,

15 (D) information obtained or furnished
16 under title VII in connection with any inter-
17 national agreement, treaty, or other obligation,
18 and

19 (E) information obtained in making the
20 determinations set forth in section 211 of this
21 Act,

22 and information obtained in any investigation of an
23 alleged violation of section 602 of this Act except for
24 information required to be disclosed by section
25 602(c)(2) or 606(b)(2) of this Act, shall be withheld

1 from public disclosure and shall not be subject to
2 disclosure under section 552 of title 5, United States
3 Code, unless the release of such information is deter-
4 mined by the Secretary to be in the national inter-
5 est.

6 ~~(b) INFORMATION TO CONGRESS AND GAO.—~~

7 ~~(1) IN GENERAL.—~~Nothing in this title shall be
8 construed as authorizing the withholding of informa-
9 tion from Congress or from the General Accounting
10 Office.

11 ~~(2) AVAILABILITY TO THE CONGRESS—~~

12 ~~(A) IN GENERAL.—~~Any information ob-
13 tained at any time under this title or under any
14 predecessor Act regarding the control of ex-
15 ports, including any report or license applica-
16 tion required under this title, shall be made
17 available to any committee or subcommittee of
18 Congress of appropriate jurisdiction upon the
19 request of the chairman or ranking minority
20 member of such committee or subcommittee.

21 ~~(B) PROHIBITION ON FURTHER DISCLO-~~
22 ~~SURE.—~~No committee, subcommittee, or Mem-
23 ber of Congress shall disclose any information
24 obtained under this Act or any predecessor Act
25 regarding the control of exports which is sub-

mitted on a confidential basis to the Congress under subparagraph (A) unless the full committee to which the information is made available determines that the withholding of the information is contrary to the national interest.

~~(3) AVAILABILITY TO THE GAO.—~~

~~(A) IN GENERAL.—~~Notwithstanding subsection (a), information described in paragraph ~~(2)~~ shall, consistent with the protection of intelligence, counterintelligence, and law enforcement sources, methods, and activities, as determined by the agency that originally obtained the information, and consistent with the provisions of section 716 of title 31, United States Code, be made available only by the agency, upon request, to the Comptroller General of the United States or to any officer or employee of the General Accounting Office authorized by the Comptroller General to have access to such information.

~~(B) PROHIBITION ON FURTHER DISCLOSURES.—~~No officer or employee of the General Accounting Office shall disclose, except to Congress in accordance with this paragraph, any such information which is submitted on a con-

1 fidential basis and from which any individual
2 can be identified.

3 (c) ~~INFORMATION EXCHANGE.~~—Notwithstanding
4 subsection (a), the Secretary and the Commissioner of
5 Customs shall exchange licensing and enforcement infor-
6 mation with each other as necessary to facilitate enforce-
7 ment efforts and effective license decisions.

8 (d) ~~PENALTIES FOR DISCLOSURE OF CONFIDENTIAL~~
9 ~~INFORMATION.~~—

10 (1) ~~DISCLOSURE PROHIBITED.~~—No officer or
11 employee of the United States, or any department or
12 agency thereof, may publish, divulge, disclose, or
13 make known in any manner or to any extent not au-
14 thorized by law any information that—

15 (A) the officer or employee obtains in the
16 course of his or her employment or official du-
17 ties or by reason of any examination or inves-
18 tigation made by, or report or record made to
19 or filed with, such department or agency, or of-
20 ficer or employee thereof; and

21 (B) is exempt from disclosure under this
22 section.

23 (2) ~~CRIMINAL PENALTIES.~~—Any such officer or
24 employee who knowingly violates paragraph (1) shall
25 be fined not more than \$50,000, imprisoned not

more than 1 year, or both, for each violation of paragraph (1). Any such officer or employee may also be removed from office or employment.

(3) CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.—The Secretary may impose a civil penalty of not more than \$5,000 for each violation of paragraph (1). Any officer or employee who commits such violation may also be removed from office or employment for the violation of paragraph (1). Subsections 603 (e), (g), (h), and (i) and 606 (a), (b), and (c) shall apply to violations described in this paragraph.

TITLE VIII—MISCELLANEOUS PROVISIONS

SEC. 801. ANNUAL AND PERIODIC REPORTS.

(a) ANNUAL REPORT.—Not later than February 1 of each year, the Secretary shall submit to Congress a report on the administration of this Act during the fiscal year ending September 30 of the preceding calendar year. All Federal agencies shall cooperate fully with the Secretary in providing information for each such report.

(b) REPORT ELEMENTS.—Each such report shall include in detail—

(1) a description of the implementation of the export control policies established by this Act, in-

1 including any delegations of authority by the President
2 and any other changes in the exercise of delegated
3 authority;

4 (2) a description of the changes to and the
5 year-end status of country tiering and the Control
6 List;

7 (3) a description of the petitions filed and the
8 determinations made with respect to foreign avail-
9 ability and mass-market status; the set-asides of for-
10 eign availability and mass-market status determina-
11 tions; and negotiations to eliminate foreign avail-
12 ability;

13 (4) a description of the regulations issued under
14 this Act;

15 (5) a description of organizational and proce-
16 dural changes undertaken in furtherance of this Act;

17 (6) a description of the enforcement activities;
18 violations; and sanctions imposed under section 604;

19 (7) a statistical summary of all applications and
20 notifications, including—

21 (A) the number of applications and notifi-
22 cations pending review at the beginning of the
23 fiscal year;

24 (B) the number of notifications returned
25 and subject to full license procedure;

1 (C) the number of notifications with no ac-
2 tion required;

3 (D) the number of applications that were
4 approved, denied, or withdrawn, and the num-
5 ber of applications where final action was
6 taken; and

7 (E) the number of applications and notifi-
8 cations pending review at the end of the fiscal
9 year;

10 (8) summary of export license data by export
11 identification code and dollar value by country;

12 (9) an identification of processing time by—

13 (A) overall average; and

14 (B) top 25 export identification codes;

15 (10) an assessment of the effectiveness of mul-
16 tilateral regimes; and a description of negotiations
17 regarding export controls;

18 (11) a description of the significant differences
19 between the export control requirements of the
20 United States and those of other multilateral control
21 regime members; the specific differences between
22 United States requirements and those of other sig-
23 nificant supplier countries; and a description of the
24 extent to which the executive branch intends to ad-
25 dress the differences;

1 ~~(12)~~ an assessment of the costs of export con-
2 trols;

3 ~~(13)~~ a description of the progress made toward
4 achieving the goals established for the Department
5 dealing with export controls under the Government
6 Performance Results Act; and

7 ~~(14)~~ any other reports required by this Act to
8 be submitted to the Committee on Banking, Hous-
9 ing, and Urban Affairs of the Senate and the Com-
10 mittee on International Relations of the House of
11 Representatives.

12 ~~(c) CONGRESSIONAL NOTIFICATION.~~—Whenever the
13 Secretary determines, in consultation with other appro-
14 priate departments and agencies, that a significant viola-
15 tion of this Act poses a direct and imminent threat to
16 United States national security interests, the Secretary,
17 in consultation with other appropriate departments and
18 agencies, shall advise the Committee on Banking, Hous-
19 ing, and Urban Affairs of the Senate and the Committee
20 on International Relations of the House of Representa-
21 tives of such violation consistent with the protection of law
22 enforcement sources, methods, and activities.

23 ~~(d) FEDERAL REGISTER PUBLICATION REQUIRE-~~
24 ~~MENTS.~~—Whenever information under this Act is required
25 to be published in the Federal Register, such information

1 shall, in addition, be made available on the appropriate
 2 Internet website of the Department.

3 **SEC. 802. TECHNICAL AND CONFORMING AMENDMENTS.**

4 (a) **REPEAL.**—The Export Administration Act of
 5 1979 (50 U.S.C. App. 2401 et seq.) is repealed.

6 (b) **ENERGY POLICY AND CONSERVATION ACT.**—

7 (1) Section 103 of the Energy Policy and Con-
 8 servation Act (42 U.S.C. 6212) is repealed.

9 (2) Section 251(d) of the Energy Policy and
 10 Conservation Act (42 U.S.C. 6271(d)) is repealed.

11 (c) **ALASKA NATURAL GAS TRANSPORTATION ACT.**—
 12 Section 12 of the Alaska Natural Gas Transportation Act
 13 of 1976 (15 U.S.C. 719j) is repealed.

14 (d) **MINERAL LEASING ACT.**—Section 28(u) of the
 15 Mineral Leasing Act (30 U.S.C. 185(u)) is repealed.

16 (e) **EXPORTS OF ALASKAN NORTH SLOPE OIL.**—Sec-
 17 tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))
 18 is repealed.

19 (f) **DISPOSITION OF CERTAIN NAVAL PETROLEUM**
 20 **RESERVE PRODUCTS.**—Section 7430(e) of title 10, United
 21 States Code, is repealed.

22 (g) **OUTER CONTINENTAL SHELF LANDS ACT.**—Sec-
 23 tion 28 of the Outer Continental Shelf Lands Act (43
 24 U.S.C. 1354) is repealed.

25 (h) **ARMS EXPORT CONTROL ACT.**—

(1) Section 38 of the Arms Export Control Act
(22 U.S.C. 2778) is amended—

(A) in subsection (e)—

(i) in the first sentence, by striking
“subsections (e)” and all that follows
through “12 of such Act,” and inserting
“subsections (b), (c), (d) and (e) of section
603 of the Export Administration Act of
2001, by subsections (a) and (b) of section
607 of such Act, and by section 702 of
such Act,”; and

(ii) in the third sentence, by striking
“11(e) of the Export Administration Act of
1979” and inserting “603(e) of the Export
Administration Act of 2001”; and

(B) in subsection (g)(1)(A)(ii), by inserting
“or section 603 of the Export Administration
Act of 2001” after “1979”.

(2) Section 39A(c) of the Arms Export Control
Act is amended—

(A) by striking “subsections (e),” and all
that follows through “12(a) of such Act” and
inserting “subsections (c), (d), and (e) of sec-
tion 603, section 608(c), and subsections (a)

1 and (b) of section 607, of the Export Adminis-
 2 tration Act of 2001”; and

3 (B) by striking “11(e)” and inserting
 4 “603(c)”.

5 (3) Section 40(k) of the Arms Export Control
 6 Act (22 U.S.C. 2780(k)) is amended—

7 (A) by striking “11(e), 11(e), 11(g), and
 8 12(a) of the Export Administration Act of
 9 1979” and inserting “603(b), 603(c), 603(c),
 10 607(a), and 607(b) of the Export Administra-
 11 tion Act of 2001”; and

12 (B) by striking “11(e)” and inserting
 13 “603(c)”.

14 (i) OTHER PROVISIONS OF LAW.—

15 (1) Section 5(b)(4) of the Trading with the
 16 Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by
 17 striking “section 5 of the Export Administration Act
 18 of 1979, or under section 6 of that Act to the extent
 19 that such controls promote the nonproliferation or
 20 antiterrorism policies of the United States” and in-
 21 serting “titles II and III of the Export Administra-
 22 tion Act of 2001”.

23 (2) Section 502B(a)(2) of the Foreign Assist-
 24 ance Act of 1961 (22 U.S.C. 2304(a)(2)) is amend-
 25 ed in the second sentence—

1 (A) by striking “Export Administration
2 Act of 1979” the first place it appears and in-
3 serting “Export Administration Act of 2001”;
4 and

5 (B) by striking “Act of 1979” and insert-
6 ing “Act of 2001”.

7 (3) Section 140(a) of the Foreign Relations Au-
8 thorization Act, Fiscal Years 1988 and 1989 (22
9 U.S.C. 2656f(a)) is amended—

10 (A) in paragraph (1)(B), by inserting “or
11 section 310 of the Export Administration Act of
12 2001” after “Act of 1979”; and

13 (B) in paragraph (2), by inserting “or 310
14 of the Export Administration Act of 2001”
15 after “6(j) of the Export Administration Act of
16 1979”.

17 (4) Section 40(e)(1) of the State Department
18 Basic Authorities Act of 1956 (22 U.S.C.
19 2712(e)(1)) is amended by striking “section 6(j)(1)
20 of the Export Administration Act of 1979” and in-
21 serting “section 310 of the Export Administration
22 Act of 2001”.

23 (5) Section 205(d)(4)(B) of the State Depart-
24 ment Basic Authorities Act of 1956 (22 U.S.C.
25 305(d)(4)(B)) is amended by striking “section 6(j)

1 of the Export Administration Act of 1979” and in-
2 serting “section 310 of the Export Administration
3 Act of 2001”.

4 (6) Section 110 of the International Security
5 and Development Cooperation Act of 1980 (22
6 U.S.C. 2778a) is amended by striking “Act of
7 1979” and inserting “Act of 2001”.

8 (7) Section 203(b)(3) of the International
9 Emergency Economic Powers Act (50 U.S.C.
10 1702(b)(3)) is amended by striking “section 5 of the
11 Export Administration Act of 1979, or under section
12 6 of such Act to the extent that such controls pro-
13 mote the nonproliferation or antiterrorism policies of
14 the United States” and inserting “the Export Ad-
15 ministration Act of 2001”.

16 (8) Section 1605(a)(7)(A) of title 28, United
17 States Code, is amended by striking “section 6(j) of
18 the Export Administration Act of 1979 (50 U.S.C.
19 App. 2405(j))” and inserting “section 310 of the
20 Export Administration Act of 2001”.

21 (9) Section 2332d(a) of title 18, United States
22 Code, is amended by striking “section 6(j) of the
23 Export Administration Act of 1979 (50 U.S.C. App.
24 2405)” and inserting “section 310 of the Export Ad-
25 ministration Act of 2001”.

(10) Section 620H(a)(1) of the Foreign Assistance Act of 1961 (22 U.S.C. 2378(a)(1)) is amended by striking “section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))” and inserting “section 310 of the Export Administration Act of 2001”.

(11) Section 1621(a) of the International Financial Institutions Act (22 U.S.C. 262p–4q(a)) is amended by striking “section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j))” and inserting “section 310 of the Export Administration Act of 2001”.

(12) Section 1956(e)(7)(D) of title 18, United States Code, is amended by striking “section 11 (relating to violations) of the Export Administration of 1979” and inserting “section 603 (relating to penalties) of the Export Administration Act of 2001”.

SEC. 803. SAVINGS PROVISIONS.

(a) IN GENERAL.—All delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action which have been made, issued, conducted, or allowed to become effective under—

(1) the Export Control Act of 1949, the Export Administration Act of 1969, the Export Administration Act of 1979, or the International Emergency

1 Economic Powers Act when invoked to maintain and
 2 continue the Export Administration regulations, or
 3 ~~(2) those provisions of the Arms Export Control~~
 4 ~~Act which are amended by section 802,~~
 5 and are in effect on the date of enactment of this Act,
 6 shall continue in effect according to their terms until
 7 modified, superseded, set aside, or revoked under this Act
 8 or the Arms Export Control Act.

9 (b) ADMINISTRATIVE AND JUDICIAL PRO-
 10 CEEDINGS.—

11 (1) EXPORT ADMINISTRATION ACT.—This Act
 12 shall not affect any administrative or judicial pro-
 13 ceedings commenced or any application for a license
 14 made, under the Export Administration Act of 1979
 15 or pursuant to Executive Order 12924, which is
 16 pending at the time this Act takes effect. Any such
 17 proceedings, and any action on such application,
 18 shall continue under the Export Administration Act
 19 of 1979 as if that Act had not been repealed.

20 ~~(2) OTHER PROVISIONS OF LAW.—This Act~~
 21 ~~shall not affect any administrative or judicial pro-~~
 22 ~~ceeding commenced or any application for a license~~
 23 ~~made, under those provisions of the Arms Export~~
 24 ~~Control Act which are amended by section 802, if~~
 25 ~~such proceeding or application is pending at the time~~

1 this Act takes effect. Any such proceeding, and any
 2 action on such application, shall continue under
 3 those provisions as if those provisions had not been
 4 amended by section 802.

5 (c) TREATMENT OF CERTAIN DETERMINATIONS.—
 6 Any determination with respect to the government of a
 7 foreign country under section 6(j) of the Export Adminis-
 8 tration Act of 1979, or Executive Order 12924, that is
 9 in effect on the day before the date of enactment of this
 10 Act, shall, for purposes of this title or any other provision
 11 of law, be deemed to be made under section 310 of this
 12 Act until superseded by a determination under such sec-
 13 tion 310.

14 (d) LAWFUL INTELLIGENCE ACTIVITIES.—The pro-
 15 hibitions otherwise applicable under this Act do not apply
 16 with respect to any transaction subject to the reporting
 17 requirements of title V of the National Security Act of
 18 1947.

19 (e) IMPLEMENTATION.—The Secretary shall make
 20 any revisions to the Export Administration regulations re-
 21 quired by this Act no later than 180 days after the date
 22 of enactment of this Act.

23 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

24 (a) *SHORT TITLE.*—*This Act may be cited as the “Ex-*
 25 *port Administration Act of 2001”.*

- 1 (b) *TABLE OF CONTENTS.—The table of contents of this*
 2 *Act is as follows:*

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.

TITLE I—GENERAL AUTHORITY

Sec. 101. Commerce Control List.
Sec. 102. Delegation of authority.
Sec. 103. Public information; consultation requirements.
Sec. 104. Right of export.
Sec. 105. Export control advisory committees.
Sec. 106. President’s Technology Export Council.
Sec. 107. Prohibition on charging fees.

TITLE II—NATIONAL SECURITY EXPORT CONTROLS

Subtitle A—Authority and Procedures

Sec. 201. Authority for national security export controls.
Sec. 202. National Security Control List.
Sec. 203. Country tiers.
Sec. 204. Incorporated parts and components.
Sec. 205. Petition process for modifying export status.

Subtitle B—Foreign Availability and Mass-Market Status

Sec. 211. Determination of foreign availability and mass-market status.
Sec. 212. Presidential set-aside of foreign availability status determination.
Sec. 213. Presidential set-aside of mass-market status determination.
Sec. 214. Office of Technology Evaluation.

TITLE III—FOREIGN POLICY EXPORT CONTROLS

Sec. 301. Authority for foreign policy export controls.
Sec. 302. Procedures for imposing controls.
Sec. 303. Criteria for foreign policy export controls.
Sec. 304. Presidential report before imposition of control.
Sec. 305. Imposition of controls.
Sec. 306. Deferral authority.
Sec. 307. Review, renewal, and termination.
Sec. 308. Termination of controls under this title.
Sec. 309. Compliance with international obligations.
Sec. 310. Designation of countries supporting international terrorism.
Sec. 311. Crime control instruments.

TITLE IV—PROCEDURES FOR EXPORT LICENSES AND INTERAGENCY DISPUTE RESOLUTION

Sec. 401. Export license procedures.
Sec. 402. Interagency dispute resolution process.

TITLE V—INTERNATIONAL ARRANGEMENTS; FOREIGN BOYCOTTS; SANCTIONS; AND ENFORCEMENT

Sec. 501. International arrangements.

Sec. 502. Foreign boycotts.

Sec. 503. Penalties.

Sec. 504. Missile proliferation control violations.

Sec. 505. Chemical and biological weapons proliferation sanctions.

Sec. 506. Enforcement.

Sec. 507. Administrative procedure.

TITLE VI—EXPORT CONTROL AUTHORITY AND REGULATIONS

Sec. 601. Export control authority and regulations.

Sec. 602. Confidentiality of information.

TITLE VII—MISCELLANEOUS PROVISIONS

Sec. 701. Annual report.

Sec. 702. Technical and conforming amendments.

Sec. 703. Savings provisions.

1 SEC. 2. DEFINITIONS.

2 *In this Act:*

3 (1) *AFFILIATE.*—*The term “affiliate” includes*
 4 *both governmental entities and commercial entities*
 5 *that are controlled in fact by the government of a*
 6 *country.*

7 (2) *CONTROL OR CONTROLLED.*—*The terms “con-*
 8 *trol” and “controlled” mean any requirement, condi-*
 9 *tion, authorization, or prohibition on the export or*
 10 *reexport of an item.*

11 (3) *CONTROL LIST.*—*The term “Control List”*
 12 *means the Commerce Control List established under*
 13 *section 101.*

14 (4) *CONTROLLED COUNTRY.*—*The term “con-*
 15 *trolled country” means a country with respect to*
 16 *which exports are controlled under section 201 or 301.*

1 (5) *CONTROLLED ITEM*.—The term “controlled
2 item” means an item the export of which is controlled
3 under this Act.

4 (6) *COUNTRY*.—The term “country” means a
5 sovereign country or an autonomous customs terri-
6 tory.

7 (7) *COUNTRY SUPPORTING INTERNATIONAL TER-*
8 *RORISM*.—The term “country supporting inter-
9 national terrorism” means a country designated by
10 the Secretary of State pursuant to section 310.

11 (8) *DEPARTMENT*.—The term “Department”
12 means the Department of Commerce.

13 (9) *EXPORT*.—

14 (A) The term “export” means—

15 (i) an actual shipment, transfer, or
16 transmission of an item out of the United
17 States;

18 (ii) a transfer to any person of an item
19 either within the United States or outside of
20 the United States with the knowledge or in-
21 tent that the item will be shipped, trans-
22 ferred, or transmitted to an unauthorized
23 recipient outside the United States; or

24 (iii) a transfer of an item in the
25 United States to an embassy or affiliate of

1 *a country, which shall be considered an ex-*
 2 *port to that country.*

3 *(B) The term includes a reexport.*

4 *(10) FOREIGN AVAILABILITY STATUS.—The term*
 5 *“foreign availability status” means the status de-*
 6 *scribed in section 211(d)(1).*

7 *(11) FOREIGN PERSON.—The term “foreign per-*
 8 *son” means—*

9 *(A) an individual who is not—*

10 *(i) a United States citizen;*

11 *(ii) an alien lawfully admitted for per-*
 12 *manent residence to the United States; or*

13 *(iii) a protected individual as defined*
 14 *in section 274B(a)(3) of the Immigration*
 15 *and Nationality Act. (8 U.S.C.*
 16 *1324b(a)(3));*

17 *(B) any corporation, partnership, business*
 18 *association, society, trust, organization, or other*
 19 *nongovernmental entity created or organized*
 20 *under the laws of a foreign country or that has*
 21 *its principal place of business outside the United*
 22 *States; and*

23 *(C) any governmental entity of a foreign*
 24 *country.*

25 *(12) ITEM.—*

1 (A) *IN GENERAL.*—The term “item” means
2 any good, technology, or service.

3 (B) *OTHER DEFINITIONS.*—In this para-
4 graph:

5 (i) *GOOD.*—The term “good” means
6 any article, natural or manmade substance,
7 material, supply or manufactured product,
8 including inspection and test equipment,
9 including source code, and excluding tech-
10 nical data.

11 (ii) *TECHNOLOGY.*—The term “tech-
12 nology” means specific information that is
13 necessary for the development, production,
14 or use of an item, and takes the form of
15 technical data or technical assistance.

16 (iii) *SERVICE.*—The term “service”
17 means any act of assistance, help or aid.

18 (13) *MASS-MARKET STATUS.*—The term “mass-
19 market status” means the status described in section
20 211(d)(2).

21 (14) *MULTILATERAL EXPORT CONTROL RE-*
22 *GIME.*—The term “multilateral export control regime”
23 means an international agreement or arrangement
24 among two or more countries, including the United
25 States, a purpose of which is to coordinate national

1 *export control policies of its members regarding cer-*
 2 *tain tems. The term includes regimes such as the Aus-*
 3 *tralia Group, the Wassenaar Arrangement, the Missile*
 4 *Technology Control Regime (MTCR), and the Nuclear*
 5 *Suppliers' Group Dual Use Arrangement.*

6 (15) *NATIONAL SECURITY CONTROL LIST.*—*The*
 7 *term “National Security Control List” means the list*
 8 *established under section 202(a).*

9 (16) *PERSON.*—*The term “person” includes—*

10 (A) *any individual, or partnership, cor-*
 11 *poration, business association, society, trust, or-*
 12 *ganization, or any other group created or orga-*
 13 *nized under the laws of a country; and*

14 (B) *any government, or any governmental*
 15 *entity, including any governmental entity oper-*
 16 *ating as a business enterprise.*

17 (17) *REEXPORT.*—*The term “reexport” means*
 18 *the shipment, transfer, transshipment, or diversion of*
 19 *items from one foreign country to another.*

20 (18) *SECRETARY.*—*The term “Secretary” means*
 21 *the Secretary of Commerce.*

22 (19) *UNITED STATES.*—*The term “United*
 23 *States” means the States of the United States, the*
 24 *District of Columbia, and any commonwealth, terri-*
 25 *tory, dependency, or possession of the United States,*

1 *and includes the outer Continental Shelf, as defined*
 2 *in section 2(a) of the Outer Continental Shelf Lands*
 3 *Act (42 U.S.C. 1331(a)).*

4 (20) *UNITED STATES PERSON.*—*The term*
 5 *“United States person” means—*

6 (A) *any United States citizen, resident, or*
 7 *national (other than an individual resident out-*
 8 *side the United States who is employed by a per-*
 9 *son other than a United States person);*

10 (B) *any domestic concern (including any*
 11 *permanent domestic establishment of any foreign*
 12 *concern); and*

13 (C) *any foreign subsidiary or affiliate (in-*
 14 *cluding any permanent foreign establishment) of*
 15 *any domestic concern which is controlled in fact*
 16 *by such domestic concern, as determined under*
 17 *regulations prescribed by the President.*

18 ***TITLE I—GENERAL AUTHORITY***

19 ***SEC. 101. COMMERCE CONTROL LIST.***

20 (a) *IN GENERAL.*—*Under such conditions as the Sec-*
 21 *retary may impose, consistent with the provisions of this*
 22 *Act, the Secretary—*

23 (1) *shall establish and maintain a Commerce*
 24 *Control List (in this Act referred to as the “Control*
 25 *List”) consisting of items the export of which are sub-*

1 *ject to licensing or other authorization or require-*
 2 *ment; and*

3 *(2) may require any type of license, or other au-*
 4 *thorization, including recordkeeping and reporting,*
 5 *appropriate to the effective and efficient implementa-*
 6 *tion of this Act with respect to the export of an item*
 7 *on the Control List or otherwise subject to control*
 8 *under title II or III of this Act.*

9 ***(b) TYPES OF LICENSE OR OTHER AUTHORIZATION.—***
 10 *The types of license or other authorization referred to in*
 11 *subsection (a)(2) include the following:*

12 ***(1) SPECIFIC EXPORTS.—****A license that author-*
 13 *izes a specific export.*

14 ***(2) MULTIPLE EXPORTS.—****A license that author-*
 15 *izes multiple exports in lieu of a license for each ex-*
 16 *port.*

17 ***(3) NOTIFICATION IN LIEU OF LICENSE.—****A no-*
 18 *tification in lieu of a license that authorizes a specific*
 19 *export or multiple exports subject to the condition*
 20 *that the exporter file with the Department advance*
 21 *notification of the intent to export in accordance with*
 22 *regulations prescribed by the Secretary.*

23 ***(4) LICENSE EXCEPTION.—****Authority to export*
 24 *an item on the Control List without prior license or*
 25 *notification in lieu of a license.*

1 (c) *AFTER-MARKET SERVICE AND REPLACEMENT*
 2 *PARTS.*—A license to export an item under this Act shall
 3 not be required for an exporter to provide after-market serv-
 4 ice or replacement parts in order to replace on a one-for-
 5 one basis parts that were in an item that was lawfully ex-
 6 ported from the United States, unless—

7 (1) the Secretary determines that such license is
 8 required to export such parts; or

9 (2) the after-market service or replacement parts
 10 would materially enhance the capability of an item
 11 which was the basis for the item being controlled.

12 (d) *INCIDENTAL TECHNOLOGY.*—A license or other au-
 13 thorization to export an item under this Act includes au-
 14 thorization to export technology related to the item, if the
 15 level of the technology does not exceed the minimum nec-
 16 essary to install, repair, maintain, inspect, operate, or use
 17 the item.

18 (e) *REGULATIONS.*—The Secretary may prescribe such
 19 regulations as are necessary to carry out the provisions of
 20 this Act.

21 **SEC. 102. DELEGATION OF AUTHORITY.**

22 (a) *IN GENERAL.*—Except as provided in subsection
 23 (b) and subject to the provisions of this Act, the President
 24 may delegate the power, authority, and discretion conferred
 25 upon the President by this Act to such departments, agen-

1 *cies, and officials of the Government as the President con-*
 2 *siders appropriate.*

3 *(b) EXCEPTIONS.—*

4 *(1) DELEGATION TO APPOINTEES CONFIRMED BY*
 5 *SENATE.—No authority delegated to the President*
 6 *under this Act may be delegated by the President to,*
 7 *or exercised by, any official of any department or*
 8 *agency the head of which is not appointed by the*
 9 *President, by and with the advice and consent of the*
 10 *Senate.*

11 *(2) OTHER LIMITATIONS.—The President may*
 12 *not delegate or transfer the President's power, author-*
 13 *ity, or discretion to overrule or modify any rec-*
 14 *ommendation or decision made by the Secretary, the*
 15 *Secretary of Defense, or the Secretary of State under*
 16 *this Act.*

17 **SEC. 103. PUBLIC INFORMATION; CONSULTATION REQUIRE-**
 18 **MENTS.**

19 *(a) PUBLIC INFORMATION.—The Secretary shall keep*
 20 *the public fully informed of changes in export control policy*
 21 *and procedures instituted in conformity with this Act.*

22 *(b) CONSULTATION WITH PERSONS AFFECTED.—The*
 23 *Secretary shall consult regularly with representatives of a*
 24 *broad spectrum of enterprises, labor organizations, and citi-*
 25 *zens interested in or affected by export controls in order*

1 *to obtain their views on United States export control policy*
 2 *and the foreign availability or mass-market status of con-*
 3 *trolled items.*

4 **SEC. 104. RIGHT OF EXPORT.**

5 *No license or other authorization to export may be re-*
 6 *quired under this Act, or under regulations issued under*
 7 *this Act, except to carry out the provisions of this Act.*

8 **SEC. 105. EXPORT CONTROL ADVISORY COMMITTEES.**

9 *(a) APPOINTMENT.—Upon the Secretary’s own initia-*
 10 *tive or upon the written request of representatives of a sub-*
 11 *stantial segment of any industry which produces any items*
 12 *subject to export controls under this Act or being considered*
 13 *for such controls, the Secretary may appoint export control*
 14 *advisory committees with respect to any such items. Each*
 15 *such committee shall consist of representatives of United*
 16 *States industry and Government officials, including offi-*
 17 *cials from the Departments of Commerce, Defense, and*
 18 *State, and other appropriate departments and agencies of*
 19 *the Government. The Secretary shall permit the widest pos-*
 20 *sible participation by the business community on the export*
 21 *control advisory committees.*

22 *(b) FUNCTIONS.—*

23 *(1) IN GENERAL.—Export control advisory com-*
 24 *mittees appointed under subsection (a) shall advise*
 25 *and assist the Secretary, and any other department,*

1 agency, or official of the Government carrying out
2 functions under this Act, on actions (including all as-
3 pects of controls imposed or proposed) designed to
4 carry out the provisions of this Act concerning the
5 items with respect to which such export control advi-
6 sory committees were appointed.

7 (2) *OTHER CONSULTATIONS.*—Nothing in para-
8 graph (1) shall prevent the United States Government
9 from consulting, at any time, with any person rep-
10 resenting an industry or the general public, regardless
11 of whether such person is a member of an export con-
12 trol advisory committee. Members of the public shall
13 be given a reasonable opportunity, pursuant to regu-
14 lations prescribed by the Secretary, to present infor-
15 mation to such committees.

16 (c) *REIMBURSEMENT OF EXPENSES.*—Upon the re-
17 quest of any member of any export control advisory com-
18 mittee appointed under subsection (a), the Secretary may,
19 if the Secretary determines it to be appropriate, reimburse
20 such member for travel, subsistence, and other necessary ex-
21 penses incurred by such member in connection with the du-
22 ties of such member.

23 (d) *CHAIRPERSON.*—Each export control advisory
24 committee appointed under subsection (a) shall elect a
25 chairperson, and shall meet at least every 3 months at the

1 *call of the chairperson, unless the chairperson determines,*
2 *in consultation with the other members of the committee,*
3 *that such a meeting is not necessary to achieve the purposes*
4 *of this section. Each such committee shall be terminated*
5 *after a period of 2 years, unless extended by the Secretary*
6 *for additional periods of 2 years each. The Secretary shall*
7 *consult with each such committee on such termination or*
8 *extension of that committee.*

9 (e) *ACCESS TO INFORMATION.—To facilitate the work*
10 *of the export control advisory committees appointed under*
11 *subsection (a), the Secretary, in conjunction with other de-*
12 *partments and agencies participating in the administra-*
13 *tion of this Act, shall disclose to each such committee ade-*
14 *quate information, consistent with national security and*
15 *intelligence sources and methods, pertaining to the reasons*
16 *for the export controls which are in effect or contemplated*
17 *for the items or policies for which that committee furnishes*
18 *advice. Information provided by the export control advisory*
19 *committees shall not be subject to disclosure under section*
20 *552 of title 5, United States Code, and such information*
21 *shall not be published or disclosed unless the Secretary de-*
22 *termines that the withholding thereof is contrary to the na-*
23 *tional interest.*

1 **SEC. 106. PRESIDENT'S TECHNOLOGY EXPORT COUNCIL.**

2 *The President may establish a President's Technology*
 3 *Export Council to advise the President on the implementa-*
 4 *tion, operation, and effectiveness of this Act.*

5 **SEC. 107. PROHIBITION ON CHARGING FEES.**

6 *No fee may be charged in connection with the submis-*
 7 *sion or processing of an application for an export license*
 8 *under this Act.*

9 **TITLE II—NATIONAL SECURITY**
 10 **EXPORT CONTROLS**
 11 **Subtitle A—Authority and**
 12 **Procedures**

13 **SEC. 201. AUTHORITY FOR NATIONAL SECURITY EXPORT**
 14 **CONTROLS.**

15 (a) *AUTHORITY.*—

16 (1) *IN GENERAL.*—*In order to carry out the pur-*
 17 *poses set forth in subsection (b), the President may,*
 18 *in accordance with the provisions of this Act, pro-*
 19 *hibit, curtail, or require a license, or other authoriza-*
 20 *tion for the export of any item subject to the jurisdic-*
 21 *tion of the United States or exported by any person*
 22 *subject to the jurisdiction of the United States. The*
 23 *President may also require recordkeeping and report-*
 24 *ing with respect to the export of such item.*

25 (2) *EXERCISE OF AUTHORITY.*—*The authority*
 26 *contained in this subsection shall be exercised by the*

1 *Secretary, in consultation with the Secretary of De-*
2 *fense, the intelligence agencies, and such other depart-*
3 *ments and agencies as the Secretary considers appro-*
4 *priate.*

5 *(b) PURPOSES.—The purposes of national security ex-*
6 *port controls are the following:*

7 *(1) To restrict the export of items that would*
8 *contribute to the military potential of countries so as*
9 *to prove detrimental to the national security of the*
10 *United States, its allies or countries sharing common*
11 *strategic objectives with the United States.*

12 *(2) To stem the proliferation of weapons of mass*
13 *destruction, and the means to deliver them, and other*
14 *significant military capabilities by—*

15 *(A) leading international efforts to control*
16 *the proliferation of chemical and biological*
17 *weapons, nuclear explosive devices, missile deliv-*
18 *ery systems, key-enabling technologies, and other*
19 *significant military capabilities;*

20 *(B) controlling involvement of United*
21 *States persons in, and contributions by United*
22 *States persons to, foreign programs intended to*
23 *develop weapons of mass destruction, missiles,*
24 *and other significant military capabilities, and*

1 *the means to design, test, develop, produce, stock-*
 2 *pile, or use them; and*

3 *(C) implementing international treaties or*
 4 *other agreements or arrangements concerning*
 5 *controls on exports of designated items, reports*
 6 *on the production, processing, consumption, and*
 7 *exports and imports of such items, and compli-*
 8 *ance with verification programs.*

9 *(3) To deter acts of international terrorism.*

10 *(c) END USE AND END USER CONTROLS.—Notwith-*
 11 *standing any other provision of this title, controls may be*
 12 *imposed, based on the end use or end user, on the export*
 13 *of any item, that could contribute to the proliferation of*
 14 *weapons of mass destruction or the means to deliver them.*

15 *(d) ENHANCED CONTROLS.—*

16 *(1) IN GENERAL.—Notwithstanding any other*
 17 *provisions of this title, the President may determine*
 18 *that applying the provisions of section 204 or 211*
 19 *with respect to an item on the National Security Con-*
 20 *trol List would constitute a significant threat to the*
 21 *national security of the United States and that such*
 22 *item requires enhanced control. If the President deter-*
 23 *mines that enhanced control should apply to such*
 24 *item, the item may be excluded from the provisions of*
 25 *section 204, section 211, or both, until such time as*

1 *the President shall determine that such enhanced con-*
 2 *trol should no longer apply to such item. The Presi-*
 3 *dent may not delegate the authority provided for in*
 4 *this subsection.*

5 (2) *REPORT TO CONGRESS.—The President shall*
 6 *promptly report any determination described in*
 7 *paragraph (1), along with the specific reasons for the*
 8 *determination, to the Committee on Banking, Hous-*
 9 *ing, and Urban Affairs of the Senate and the Com-*
 10 *mittee on International Relations of the House of*
 11 *Representatives.*

12 **SEC. 202. NATIONAL SECURITY CONTROL LIST.**

13 (a) *ESTABLISHMENT OF LIST.—*

14 (1) *ESTABLISHMENT.—The Secretary shall estab-*
 15 *lish and maintain a National Security Control List*
 16 *as part of the Control List.*

17 (2) *CONTENTS.—The National Security Control*
 18 *List shall be composed of a list of items the export of*
 19 *which is controlled for national security purposes*
 20 *under this title.*

21 (3) *IDENTIFICATION OF ITEMS FOR NATIONAL SE-*
 22 *curity Control List.—The Secretary, with the con-*
 23 *currence of the Secretary of Defense and in consulta-*
 24 *tion with the head of any other department or agency*
 25 *of the United States that the Secretary considers ap-*

1 *appropriate, shall identify the items to be included on*
2 *the National Security Control List provided that the*
3 *National Security Control List shall, on the date of*
4 *enactment of this Act, include all of the items on the*
5 *Commerce Control List controlled on the day before*
6 *the date of enactment of this Act to protect the na-*
7 *tional security of the United States, to prevent the*
8 *proliferation of weapons of mass destruction and the*
9 *means to deliver them, and to deter acts of inter-*
10 *national terrorism. The Secretary shall review on a*
11 *continuing basis and, with the concurrence of the Sec-*
12 *retary of Defense and in consultation with the head*
13 *of any other department or agency of the United*
14 *States that the Secretary considers appropriate, ad-*
15 *just the National Security Control List to add items*
16 *that require control under this section and to remove*
17 *items that no longer warrant control under this sec-*
18 *tion.*

19 *(b) RISK ASSESSMENT.—*

20 *(1) REQUIREMENT.—In establishing and main-*
21 *taining the National Security Control List, the risk*
22 *factors set forth in paragraph (2) shall be considered,*
23 *weighing national security concerns and economic*
24 *costs.*

1 (2) *RISK FACTORS.*—*The risk factors referred to*
2 *in paragraph (1), with respect to each item, are as*
3 *follows:*

4 (A) *The characteristics of the item.*

5 (B) *The threat, if any, to the United States*
6 *or the national security interest of the United*
7 *States from the misuse or diversion of such item.*

8 (C) *The effectiveness of controlling the item*
9 *for national security purposes of the United*
10 *States, taking into account mass-market status,*
11 *foreign availability, and other relevant factors.*

12 (D) *The threat to the national security in-*
13 *terests of the United States if the item is not con-*
14 *trolled.*

15 (E) *Any other appropriate risk factors.*

16 (c) *REPORT ON CONTROL LIST.*—*Not later than 90*
17 *days after the date of enactment of this Act, the Secretary*
18 *shall submit a report to Congress which lists all items on*
19 *the Commerce Control List controlled on the day before the*
20 *date of enactment of this Act to protect the national security*
21 *of the United States, to prevent the proliferation of weapons*
22 *of mass destruction and the means to deliver them, and to*
23 *deter acts of international terrorism, not included on the*
24 *National Security Control List pursuant to the provisions*
25 *of this Act.*

1 **SEC. 203. COUNTRY TIERS.**

2 (a) *IN GENERAL.*—

3 (1) *ESTABLISHMENT AND ASSIGNMENT.*—*In ad-*
4 *ministering export controls for national security pur-*
5 *poses under this title, the President shall, not later*
6 *than 120 days after the date of enactment of this*
7 *Act—*

8 (A) *establish and maintain a country*
9 *tiering system in accordance with subsection (b);*
10 *and*

11 (B) *based on the assessments required under*
12 *subsection (c), assign each country to an appro-*
13 *priate tier for each item or group of items the*
14 *export of which is controlled for national secu-*
15 *rity purposes under this title.*

16 (2) *CONSULTATION.*—*The establishment and as-*
17 *signment of country tiers under this section shall be*
18 *made after consultation with the Secretary, the Sec-*
19 *retary of Defense, the Secretary of State, the intel-*
20 *ligence agencies, and such other departments and*
21 *agencies as the President considers appropriate.*

22 (3) *REDETERMINATION AND REVIEW OF ASSIGN-*
23 *MENTS.*—*The President may redetermine the assign-*
24 *ment of a country to a particular tier at any time*
25 *and shall review and, as the President considers ap-*
26 *propriate, reassign country tiers on an on-going*

1 *basis. The Secretary shall provide notice of any such*
 2 *reassignment to the Committee on Banking, Housing,*
 3 *and Urban Affairs of the Senate and the Committee*
 4 *on International Relations of the House of Represent-*
 5 *atives.*

6 (4) *EFFECTIVE DATE OF TIER ASSIGNMENT.—*

7 *An assignment of a country to a particular tier shall*
 8 *take effect on the date on which notice of the assign-*
 9 *ment is published in the Federal Register.*

10 (b) *TIERS.—*

11 (1) *IN GENERAL.—The President shall establish*
 12 *a country tiering system consisting of not less than*
 13 *3 tiers for purposes of this section.*

14 (2) *RANGE.—Countries that represent the lowest*
 15 *risk of diversion or misuse of an item on the National*
 16 *Security Control List shall be assigned to the lowest*
 17 *tier. Countries that represent the highest risk of diver-*
 18 *sion or misuse of an item on the National Security*
 19 *Control List shall be assigned to the highest tier.*

20 (3) *OTHER COUNTRIES.—Countries that fall be-*
 21 *tween the lowest and highest risk to the national secu-*
 22 *rity interest of the United States with respect to the*
 23 *risk of diversion or misuse of an item on the National*
 24 *Security Control List shall be assigned to a tier other*

1 *than the lowest or highest tier, based on the assess-*
2 *ments required under subsection (c).*

3 (c) *ASSESSMENTS.—The President shall make an as-*
4 *essment of each country in assigning a country tier taking*
5 *into consideration risk factors including the following:*

6 (1) *The present and potential relationship of the*
7 *country with the United States.*

8 (2) *The present and potential relationship of the*
9 *country with countries friendly to the United States*
10 *and with countries hostile to the United States.*

11 (3) *The country's capabilities regarding chem-*
12 *ical, biological, and nuclear weapons and the coun-*
13 *try's membership in, and level of compliance with,*
14 *relevant multilateral export control regimes.*

15 (4) *The country's capabilities regarding missile*
16 *systems and the country's membership in, and level of*
17 *compliance with, relevant multilateral export control*
18 *regimes.*

19 (5) *Whether the country, if a NATO or major*
20 *non-NATO ally with whom the United States has en-*
21 *tered into a free trade agreement as of January 1,*
22 *1986, controls exports in accordance with the criteria*
23 *and standards of a multilateral export control regime*
24 *as defined in section 2(14) pursuant to an inter-*

1 *national agreement to which the United States is a*
 2 *party.*

3 *(6) The country's other military capabilities and*
 4 *the potential threat posed by the country to the*
 5 *United States or its allies.*

6 *(7) The effectiveness of the country's export con-*
 7 *trol system.*

8 *(8) The level of the country's cooperation with*
 9 *United States export control enforcement and other ef-*
 10 *forts.*

11 *(9) The risk of export diversion by the country*
 12 *to a higher tier country.*

13 *(10) The designation of the country as a country*
 14 *supporting international terrorism under section 310.*

15 *(d) TIER APPLICATION.—The country tiering system*
 16 *shall be used in the determination of license requirements*
 17 *pursuant to section 201(a)(1).*

18 **SEC. 204. INCORPORATED PARTS AND COMPONENTS.**

19 *(a) EXPORT OF ITEMS CONTAINING CONTROLLED*
 20 *PARTS AND COMPONENTS.—Controls may not be imposed*
 21 *under this title or any other provision of law on an item*
 22 *solely because the item contains parts or components subject*
 23 *to export controls under this title, if the parts or*
 24 *components—*

25 *(1) are essential to the functioning of the item,*

1 (2) *are customarily included in sales of the item*
 2 *in countries other than controlled countries, and*

3 (3) *comprise 25 percent or less of the total value*
 4 *of the item,*

5 *unless the item itself, if exported, would by virtue of the*
 6 *functional characteristics of the item as a whole make a*
 7 *significant contribution to the military or proliferation po-*
 8 *tential of a controlled country or end user which would*
 9 *prove detrimental to the national security of the United*
 10 *States, or unless failure to control the item would be con-*
 11 *trary to the provisions of section 201(c), section 201(d), or*
 12 *section 309 of this Act.*

13 (b) *REEXPORTS OF FOREIGN-MADE ITEMS INCOR-*
 14 *PORATING UNITED STATES CONTROLLED CONTENT.—*

15 (1) *IN GENERAL.—No authority or permission*
 16 *may be required under this title to reexport to a coun-*
 17 *try an item that is produced in a country other than*
 18 *the United States and incorporates parts or compo-*
 19 *nents that are subject to the jurisdiction of the United*
 20 *States, if the value of the controlled United States*
 21 *content of the item produced in such other country is*
 22 *25 percent or less of the total value of the item; except*
 23 *that in the case of reexports of an item to a country*
 24 *designated as a country supporting international ter-*
 25 *rorism pursuant to section 310, controls may be*

1 *maintained if the value of the controlled United*
 2 *States content is more than 10 percent of the total*
 3 *value of the item.*

4 (2) *DEFINITION OF CONTROLLED UNITED STATES*
 5 *CONTENT.—For purposes of this paragraph, the term*
 6 *“controlled United States content” of an item means*
 7 *those parts or components that—*

8 (A) *are subject to the jurisdiction of the*
 9 *United States;*

10 (B) *are incorporated into the item; and*

11 (C) *would, at the time of the reexport, re-*
 12 *quire a license under this title if exported from*
 13 *the United States to a country to which the item*
 14 *is to be reexported.*

15 **SEC. 205. PETITION PROCESS FOR MODIFYING EXPORT STA-**
 16 **TUS.**

17 (a) *ESTABLISHMENT.—The Secretary shall establish a*
 18 *process for interested persons to petition the Secretary to*
 19 *change the status of an item on the National Security Con-*
 20 *trol List.*

21 (b) *EVALUATIONS AND DETERMINATIONS.—Evalua-*
 22 *tions and determinations with respect to a petition filed*
 23 *pursuant to this section shall be made in accordance with*
 24 *section 202.*

***Subtitle B—Foreign Availability
and Mass-Market Status***

***SEC. 211. DETERMINATION OF FOREIGN AVAILABILITY AND
MASS-MARKET STATUS.***

(a) IN GENERAL.—The Secretary shall—

(1) on a continuing basis,

*(2) upon a request from the Office of Technology
Evaluation, or*

*(3) upon receipt of a petition filed by an inter-
ested party,*

*review and determine the foreign availability and the mass-
market status of any item the export of which is controlled
under this title.*

(b) PETITION AND CONSULTATION.—

*(1) IN GENERAL.—The Secretary shall establish
a process for an interested party to petition the Sec-
retary for a determination that an item has a foreign
availability or mass-market status. In evaluating and
making a determination with respect to a petition
filed under this section, the Secretary shall consult
with the Secretary of Defense, Secretary of State, and
other appropriate Government agencies and with the
Office of Technology Evaluation (established pursuant
to section 214).*

1 (2) *TIME FOR MAKING DETERMINATION.*—The
 2 Secretary shall, within 6 months after receiving a pe-
 3 tition described in subsection (a)(3), determine wheth-
 4 er the item that is the subject of the petition has for-
 5 eign availability or mass-market status and shall no-
 6 tify the petitioner of the determination.

7 (c) *RESULT OF DETERMINATION.*—In any case in
 8 which the Secretary determines, in accordance with proce-
 9 dures and criteria which the Secretary shall by regulation
 10 establish, that an item described in subsection (a) has—

11 (1) a foreign availability status, or

12 (2) a mass-market status,

13 the Secretary shall notify the President (and other appro-
 14 priate departments and agencies) and publish the notice of
 15 the determination in the Federal Register. The Secretary's
 16 determination shall become final 30 days after the date the
 17 notice is published, the item shall be removed from the Na-
 18 tional Security Control List, and a license or other author-
 19 ization shall not be required under this title with respect
 20 to the item, unless the President makes a determination de-
 21 scribed in section 212 or 213, or takes action under section
 22 309, with respect to the item in that 30-day period.

23 (d) *CRITERIA FOR DETERMINING FOREIGN AVAIL-*
 24 *ABILITY AND MASS-MARKET STATUS.*—

1 (1) *FOREIGN AVAILABILITY STATUS.*—*The Sec-*
 2 *retary shall determine that an item has foreign avail-*
 3 *ability status under this subtitle, if the item (or a*
 4 *substantially identical or directly competitive item)—*

5 (A) *is available to controlled countries from*
 6 *sources outside the United States, including*
 7 *countries that participate with the United States*
 8 *in multilateral export controls;*

9 (B) *can be acquired at a price that is not*
 10 *excessive when compared to the price at which a*
 11 *controlled country could acquire such item from*
 12 *sources within the United States in the absence*
 13 *of export controls; and*

14 (C) *is available in sufficient quantity so*
 15 *that the requirement of a license or other author-*
 16 *ization with respect to the export of such item is*
 17 *or would be ineffective.*

18 (2) *MASS-MARKET STATUS.*—

19 (A) *IN GENERAL.*—*In determining whether*
 20 *an item has mass-market status under this sub-*
 21 *title, the Secretary shall consider the following*
 22 *criteria with respect to the item (or a substan-*
 23 *tially identical or directly competitive item):*

1 (i) *The production and availability for*
 2 *sale in a large volume to multiple potential*
 3 *purchasers.*

4 (ii) *The widespread distribution*
 5 *through normal commercial channels, such*
 6 *as retail stores, direct marketing catalogues,*
 7 *electronic commerce, and other channels.*

8 (iii) *The conduciveness to shipment*
 9 *and delivery by generally accepted commer-*
 10 *cial means of transport.*

11 (iv) *The use for the item's normal in-*
 12 *tended purpose without substantial and spe-*
 13 *cialized service provided by the manufac-*
 14 *turer, distributor, or other third party.*

15 (B) *DETERMINATION BY SECRETARY.—If*
 16 *the Secretary finds that the item (or a substan-*
 17 *tially identical or directly competitive item)*
 18 *meets the criteria set forth in subparagraph (A),*
 19 *the Secretary shall determine that the item has*
 20 *mass-market status.*

21 (3) *SPECIAL RULES.—For purposes of this*
 22 *subtitle—*

23 (A) *SUBSTANTIALLY IDENTICAL ITEM.—The*
 24 *determination of whether an item in relation to*
 25 *another item is a substantially identical item*

1 *shall include a fair assessment of end-uses, the*
 2 *properties, nature, and quality of the item.*

3 *(B) DIRECTLY COMPETITIVE ITEM.—*

4 *(i) IN GENERAL.—The determination*
 5 *of whether an item in relation to another*
 6 *item is a directly competitive item shall in-*
 7 *clude a fair assessment of whether the item,*
 8 *although not substantially identical in its*
 9 *intrinsic or inherent characteristics, is sub-*
 10 *stantially equivalent for commercial pur-*
 11 *poses and may be adapted for substantially*
 12 *the same uses.*

13 *(ii) EXCEPTION.—An item is not di-*
 14 *rectly competitive with a controlled item if*
 15 *the item is substantially inferior to the con-*
 16 *trolled item with respect to characteristics*
 17 *that resulted in the export of the item being*
 18 *controlled.*

19 **SEC. 212. PRESIDENTIAL SET-ASIDE OF FOREIGN AVAIL-**
 20 **ABILITY STATUS DETERMINATION.**

21 *(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—*

22 *(1) GENERAL CRITERIA.—*

23 *(A) IN GENERAL.—If the President deter-*
 24 *mines that—*

1 (i) *decontrolling or failing to control*
 2 *an item constitutes a threat to the national*
 3 *security of the United States, and export*
 4 *controls on the item would advance the na-*
 5 *tional security interests of the United*
 6 *States,*

7 (ii) *there is a high probability that the*
 8 *foreign availability of an item will be elimi-*
 9 *nated through international negotiations*
 10 *within a reasonable period of time taking*
 11 *into account the characteristics of the item,*
 12 *or*

13 (iii) *United States controls on the item*
 14 *have been imposed under section 309,*
 15 *the President may set aside the Secretary's deter-*
 16 *mination of foreign availability status with re-*
 17 *spect to the item.*

18 (B) *NONDELEGATION.*—*The President may*
 19 *not delegate the authority provided for in this*
 20 *paragraph.*

21 (2) *REPORT TO CONGRESS.*—*The President shall*
 22 *promptly—*

23 (A) *report any set-aside determination de-*
 24 *scribed in paragraph (1), along with the specific*
 25 *reasons for the determination, to the Committee*

1 *on Banking, Housing, and Urban Affairs of the*
 2 *Senate and the Committee on International Re-*
 3 *lations of the House of Representatives; and*

4 *(B) publish the determination in the Fed-*
 5 *eral Register.*

6 ***(b) PRESIDENTIAL ACTION IN CASE OF SET-ASIDE.—***

7 ***(1) IN GENERAL.—***

8 ***(A) NEGOTIATIONS.—****In any case in which*
 9 *export controls are maintained on an item be-*
 10 *cause the President has made a determination*
 11 *under subsection (a), the President shall actively*
 12 *pursue negotiations with the governments of the*
 13 *appropriate foreign countries for the purpose of*
 14 *eliminating such availability.*

15 ***(B) REPORT TO CONGRESS.—****Not later than*
 16 *the date the President begins negotiations, the*
 17 *President shall notify in writing the Committee*
 18 *on Banking, Housing, and Urban Affairs of the*
 19 *Senate and the Committee on International Re-*
 20 *lations of the House of Representatives that the*
 21 *President has begun such negotiations and why*
 22 *the President believes it is important to the na-*
 23 *tional security that export controls on the item*
 24 *involved be maintained.*

1 (2) *PERIODIC REVIEW OF DETERMINATION.*—The
 2 *President shall review a determination described in*
 3 *subsection (a) at least every 6 months. Promptly after*
 4 *each review is completed, the Secretary shall submit*
 5 *to the committees of Congress referred to in para-*
 6 *graph (1)(B) a report on the results of the review, to-*
 7 *gether with the status of international negotiations to*
 8 *eliminate the foreign availability of the item.*

9 (3) *EXPIRATION OF PRESIDENTIAL SET-ASIDE.*—
 10 *A determination by the President described in sub-*
 11 *section (a)(1)(A) (i) or (ii) shall cease to apply with*
 12 *respect to an item on the earlier of—*

13 (A) *the date that is 6 months after the date on*
 14 *which the determination is made under sub-*
 15 *section (a), if the President has not commenced*
 16 *international negotiations to eliminate the for-*
 17 *ign availability of the item within that 6-month*
 18 *period;*

19 (B) *the date on which the negotiations de-*
 20 *scribed in paragraph (1) have terminated with-*
 21 *out achieving an agreement to eliminate foreign*
 22 *availability;*

23 (C) *the date on which the President deter-*
 24 *mines that there is not a high probability of*

eliminating foreign availability of the item
through negotiation; or

(D) the date that is 18 months after the
date on which the determination described in
subsection (a)(1)(A) (i) or (ii) is made if the
President has been unable to achieve an agree-
ment to eliminate foreign availability within
that 18-month period.

(4) ACTION ON EXPIRATION OF PRESIDENTIAL
SET-ASIDE.—Upon the expiration of a Presidential
set-aside under paragraph (3) with respect to an
item, the Secretary shall not require a license or other
authorization to export the item.

**SEC. 213. PRESIDENTIAL SET-ASIDE OF MASS-MARKET STA-
TUS DETERMINATION.**

(a) CRITERIA FOR PRESIDENTIAL SET-ASIDE.—

(1) GENERAL CRITERIA.—If the President deter-
mines that—

(A)(i) decontrolling or failing to control an
item constitutes a serious threat to the national
security of the United States, and

(ii) export controls on the item would ad-
vance the national security interests of the
United States, or

1 (B) *United States controls on the item have*
 2 *been imposed under section 309,*
 3 *the President may set aside the Secretary's deter-*
 4 *mination of mass-market status with respect to the*
 5 *item.*

6 (2) *NONDELEGATION.—The President may not*
 7 *delegate the authority provided for in this subsection.*

8 (b) *PRESIDENTIAL ACTION IN CASE OF SET-ASIDE.—*

9 (1) *IN GENERAL.—In any case in which export*
 10 *controls are maintained on an item because the Presi-*
 11 *dent has made a determination under subsection (a),*
 12 *the President shall promptly report the determina-*
 13 *tion, along with the specific reasons for the deter-*
 14 *mination, to the Committee on Banking, Housing,*
 15 *and Urban Affairs of the Senate and the Committee*
 16 *on International Relations of the House of Represent-*
 17 *atives, and shall publish notice of the determination*
 18 *in the Federal Register not later than 30 days after*
 19 *the Secretary publishes notice of the Secretary's deter-*
 20 *mination that an item has mass-market status.*

21 (2) *PERIODIC REVIEW OF DETERMINATION.—The*
 22 *President shall review a determination made under*
 23 *subsection (a) at least every 6 months. Promptly after*
 24 *each review is completed, the Secretary shall submit*
 25 *a report on the results of the review to the Committee*

1 *on Banking, Housing, and Urban Affairs of the Sen-*
 2 *ate and the Committee on International Relations of*
 3 *the House of Representatives.*

4 **SEC. 214. OFFICE OF TECHNOLOGY EVALUATION.**

5 (a) *IN GENERAL.*—

6 (1) *ESTABLISHMENT OF OFFICE.*—*The Secretary*
 7 *shall establish in the Department of Commerce an Of-*
 8 *fice of Technology Evaluation (in this section referred*
 9 *to as the “Office”), which shall be under the direction*
 10 *of the Secretary. The Office shall be responsible for*
 11 *gathering, coordinating, and analyzing all the nec-*
 12 *essary information in order for the Secretary to make*
 13 *determinations of foreign availability and mass-mar-*
 14 *ket status under this Act.*

15 (2) *STAFF.*—

16 (A) *IN GENERAL.*—*The Secretary shall en-*
 17 *sure that the Office include persons to carry out*
 18 *the responsibilities set forth in subsection (b) of*
 19 *this section that have training, expertise, and ex-*
 20 *perience in—*

21 (i) *economic analysis;*

22 (ii) *the defense industrial base;*

23 (iii) *technological developments; and*

24 (iv) *national security and foreign pol-*
 25 *icy export controls.*

1 (B) *DETAILEES.*—*In addition to employees*
2 *of the Department of Commerce, the Secretary*
3 *may accept on nonreimbursable detail to the Of-*
4 *fice, employees of the Departments of Defense,*
5 *State, and Energy and other departments and*
6 *agencies as appropriate.*

7 (b) *RESPONSIBILITIES.*—*The Office shall be respon-*
8 *sible for—*

9 (1) *conducting foreign availability assessments*
10 *to determine whether a controlled item is available to*
11 *controlled countries and whether requiring a license,*
12 *or denial of a license for the export of such item, is*
13 *or would be ineffective;*

14 (2) *conducting mass-market assessments to deter-*
15 *mine whether a controlled item is available to con-*
16 *trolled countries because of the mass-market status of*
17 *the item;*

18 (3) *monitoring and evaluating worldwide techno-*
19 *logical developments in industry sectors critical to the*
20 *national security interests of the United States to de-*
21 *termine foreign availability and mass-market status*
22 *of controlled items;*

23 (4) *monitoring and evaluating multilateral ex-*
24 *port control regimes and foreign government export*

1 *control policies and practices that affect the national*
2 *security interests of the United States;*

3 *(5) conducting assessments of United States in-*
4 *dustrial sectors critical to the United States defense*
5 *industrial base and how the sectors are affected by*
6 *technological developments, technology transfers, and*
7 *foreign competition; and*

8 *(6) conducting assessments of the impact of*
9 *United States export control policies on—*

10 *(A) United States industrial sectors critical*
11 *to the national security interests of the United*
12 *States; and*

13 *(B) the United States economy in general.*

14 *(c) REPORTS TO CONGRESS.—The Secretary shall*
15 *make available to the Committee on International Relations*
16 *of the House of Representatives and the Committee on*
17 *Banking, Housing, and Urban Affairs of the Senate as part*
18 *of the Secretary's annual report required under section 701*
19 *information on the operations of the Office, and on im-*
20 *provements in the Government's ability to assess foreign*
21 *availability and mass-market status, during the fiscal year*
22 *preceding the report, including information on the training*
23 *of personnel, and the use of Commercial Service Officers*
24 *of the United States and Foreign Commercial Service to*
25 *assist in making determinations. The information shall also*

1 *include a description of determinations made under this*
 2 *Act during the preceding fiscal year that foreign avail-*
 3 *ability or mass-market status did or did not exist (as the*
 4 *case may be), together with an explanation of the deter-*
 5 *minations.*

6 (d) *SHARING OF INFORMATION.*—*Each department or*
 7 *agency of the United States, including any intelligence*
 8 *agency, and all contractors with any such department or*
 9 *agency, shall, consistent with the need to protect intelligence*
 10 *sources and methods, furnish information to the Office con-*
 11 *cerning foreign availability and the mass-market status of*
 12 *items subject to export controls under this Act.*

13 ***TITLE III—FOREIGN POLICY*** 14 ***EXPORT CONTROLS***

15 ***SEC. 301. AUTHORITY FOR FOREIGN POLICY EXPORT CON-*** 16 ***TROLS.***

17 (a) *AUTHORITY.*—

18 (1) *IN GENERAL.*—*In order to carry out the pur-*
 19 *poses set forth in subsection (b), the President may,*
 20 *in accordance with the provisions of this Act, pro-*
 21 *hibit, curtail, or require a license, other authoriza-*
 22 *tion, recordkeeping, or reporting for the export of any*
 23 *item subject to the jurisdiction of the United States*
 24 *or exported by any person subject to the jurisdiction*
 25 *of the United States.*

1 (2) *EXERCISE OF AUTHORITY.*—*The authority*
2 *contained in this subsection shall be exercised by the*
3 *Secretary, in consultation with the Secretary of State*
4 *and such other departments and agencies as the Sec-*
5 *retary considers appropriate.*

6 (b) *PURPOSES.*—*The purposes of foreign policy export*
7 *controls are the following:*

8 (1) *To promote the foreign policy objectives of the*
9 *United States, consistent with the purposes of this sec-*
10 *tion and the provisions of this Act.*

11 (2) *To promote international peace, stability,*
12 *and respect for fundamental human rights.*

13 (3) *To use export controls to deter and punish*
14 *acts of international terrorism and to encourage other*
15 *countries to take immediate steps to prevent the use*
16 *of their territories or resources to aid, encourage, or*
17 *give sanctuary to those persons involved in directing,*
18 *supporting, or participating in acts of international*
19 *terrorism.*

20 (c) *FOREIGN PRODUCTS.*—*No authority or permission*
21 *may be required under this title to reexport to a country*
22 *an item that is produced in a country other than the United*
23 *States and incorporates parts or components that are sub-*
24 *ject to the jurisdiction of the United States, except that in*
25 *the case of reexports of an item to a country designated*

1 *as a country supporting international terrorism pursuant*
 2 *to section 310, controls may be maintained if the value of*
 3 *the controlled United States content is more than 10 percent*
 4 *of the value of the item.*

5 (d) *CONTRACT SANCTITY.*—

6 (1) *IN GENERAL.*—*The President may not pro-*
 7 *hibit the export of any item under this title if that*
 8 *item is to be exported—*

9 (A) *in performance of a binding contract,*
 10 *agreement, or other contractual commitment en-*
 11 *tered into before the date on which the President*
 12 *reports to Congress the President's intention to*
 13 *impose controls on that item under this title; or*

14 (B) *under a license or other authorization*
 15 *issued under this Act before the earlier of the*
 16 *date on which the control is initially imposed or*
 17 *the date on which the President reports to Con-*
 18 *gress the President's intention to impose controls*
 19 *under this title.*

20 (2) *EXCEPTION.*—*The prohibition contained in*
 21 *paragraph (1) shall not apply in any case in which*
 22 *the President determines and certifies to the Com-*
 23 *mittee on Banking, Housing, and Urban Affairs of*
 24 *the Senate and the Committee on International Rela-*
 25 *tions of the House of Representatives that—*

1 (A) *there is a serious threat to a foreign*
 2 *policy interest of the United States;*

3 (B) *the prohibition of exports under each*
 4 *binding contract, agreement, commitment, li-*
 5 *cence, or authorization will be instrumental in*
 6 *remedying the situation posing the serious*
 7 *threat; and*

8 (C) *the export controls will be in effect only*
 9 *as long as the serious threat exists.*

10 **SEC. 302. PROCEDURES FOR IMPOSING CONTROLS.**

11 (a) *NOTICE.—*

12 (1) *INTENT TO IMPOSE FOREIGN POLICY EXPORT*
 13 *CONTROL.—Except as provided in section 306, not*
 14 *later than 45 days before imposing or implementing*
 15 *an export control under this title, the President shall*
 16 *publish in the Federal Register—*

17 (A) *a notice of intent to do so; and*

18 (B) *provide for a period of not less than 30*
 19 *days for any interested person to submit com-*
 20 *ments on the export control proposed under this*
 21 *title.*

22 (2) *PURPOSES OF NOTICE.—The purposes of the*
 23 *notice are—*

24 (A) *to provide an opportunity for the for-*
 25 *mulation of an effective export control policy*

1 *under this title that advances United States eco-*
2 *nomie and foreign policy interests; and*

3 *(B) to provide an opportunity for negotia-*
4 *tions to achieve the purposes set forth in section*
5 *301(b).*

6 *(b) NEGOTIATIONS.—During the 45-day period that*
7 *begins on the date of notice described in subsection (a), the*
8 *President may negotiate with the government of the foreign*
9 *country against which the export control is proposed in*
10 *order to resolve the reasons underlying the proposed export*
11 *control.*

12 *(c) CONSULTATION.—*

13 *(1) REQUIREMENT.—The President shall consult*
14 *with the Committee on Banking, Housing, and Urban*
15 *Affairs of the Senate and the Committee on Inter-*
16 *national Relations of the House of Representatives re-*
17 *garding any export control proposed under this title*
18 *and the efforts to achieve or increase multilateral co-*
19 *operation on the issues or problems underlying the*
20 *proposed export control.*

21 *(2) CLASSIFIED CONSULTATION.—The consulta-*
22 *tions described in paragraph (1) may be conducted on*
23 *a classified basis if the Secretary considers it nec-*
24 *essary.*

1 **SEC. 303. CRITERIA FOR FOREIGN POLICY EXPORT CON-**
2 **TROLS.**

3 *Each export control imposed by the President under*
4 *this title shall—*

5 *(1) have clearly stated and specific United States*
6 *foreign policy objectives;*

7 *(2) have objective standards for evaluating the*
8 *success or failure of the export control;*

9 *(3) include an assessment by the President*
10 *that—*

11 *(A) the export control is likely to achieve*
12 *such objectives and the expected time for achiev-*
13 *ing the objectives; and*

14 *(B) the achievement of the objectives of the*
15 *export control outweighs any potential costs of*
16 *the export control to other United States eco-*
17 *nomics, foreign policy, humanitarian, or national*
18 *security interests;*

19 *(4) be targeted narrowly; and*

20 *(5) seek to minimize any adverse impact on the*
21 *humanitarian activities of United States and foreign*
22 *nongovernmental organizations in the country subject*
23 *to the export control.*

1 **SEC. 304. PRESIDENTIAL REPORT BEFORE IMPOSITION OF**
2 **CONTROL.**

3 (a) *REQUIREMENT.*—Before imposing an export con-
4 trol under this title, the President shall submit to the Com-
5 mittee on Banking, Housing, and Urban Affairs of the Sen-
6 ate and the Committee on International Relations of the
7 House of Representatives a report on the proposed export
8 control. The report may be provided on a classified basis
9 if the Secretary considers it necessary.

10 (b) *CONTENT.*—The report shall contain a description
11 and assessment of each of the criteria described in section
12 303. In addition, the report shall contain a description and
13 assessment of—

14 (1) any diplomatic and other steps that the
15 United States has taken to accomplish the intended
16 objective of the proposed export control;

17 (2) unilateral export controls imposed, and other
18 measures taken, by other countries to achieve the in-
19 tended objective of the proposed export control;

20 (3) the likelihood of multilateral adoption of
21 comparable export controls;

22 (4) alternative measures to promote the same ob-
23 jectives and the likelihood of their potential success;

24 (5) any United States obligations under inter-
25 national trade agreements, treaties, or other inter-

1 *national arrangements, with which the proposed ex-*
 2 *port control may conflict;*

3 *(6) the likelihood that the proposed export con-*
 4 *trol could lead to retaliation against United States*
 5 *interests;*

6 *(7) the likely economic impact of the proposed*
 7 *export control on the United States economy, United*
 8 *States international trade and investment, and*
 9 *United States agricultural interests, commercial in-*
 10 *terests, and employment; and*

11 *(8) a conclusion that the probable achievement of*
 12 *the objectives of the proposed export control outweighs*
 13 *any likely costs to United States economic, foreign*
 14 *policy, humanitarian, or national security interests,*
 15 *including any potential harm to the United States*
 16 *agricultural and business firms and to the inter-*
 17 *national reputation of the United States as a reliable*
 18 *supplier of goods, services, or technology.*

19 **SEC. 305. IMPOSITION OF CONTROLS.**

20 *The President may impose an export control under*
 21 *this title after the submission of the report required under*
 22 *section 304 and publication in the Federal Register of a*
 23 *notice of the imposition of the export control .*

1 **SEC. 306. DEFERRAL AUTHORITY.**

2 (a) *AUTHORITY.*—*The President may defer compliance*
 3 *with any requirement contained in section 302(a), 304, or*
 4 *305 in the case of a proposed export control if—*

5 (1) *the President determines that a deferral of*
 6 *compliance with the requirement is in the national*
 7 *interest of the United States; and*

8 (2) *the requirement is satisfied not later than 60*
 9 *days after the date on which the export control is im-*
 10 *posed under this title.*

11 (b) *TERMINATION OF CONTROL.*—*An export control*
 12 *with respect to which a deferral has been made under sub-*
 13 *section (a) shall terminate 60 days after the date the export*
 14 *control is imposed unless all requirements have been satis-*
 15 *fied before the expiration of the 60-day period.*

16 **SEC. 307. REVIEW, RENEWAL, AND TERMINATION.**

17 (a) *RENEWAL AND TERMINATION.*—

18 (1) *IN GENERAL.*—*Any export control imposed*
 19 *under this title shall terminate on March 31 of each*
 20 *renewal year unless the President renews the export*
 21 *control on or before such date. For purposes of this*
 22 *section, the term “renewal year” means 2003 and*
 23 *every 2 years thereafter.*

24 (2) *EXCEPTION.*—*This section shall not apply to*
 25 *an export control imposed under this title that—*

26 (A) *is required by law;*

1 (B) is targeted against any country des-
2 ignated as a country supporting international
3 terrorism pursuant to section 310; or

4 (C) has been in effect for less than 1 year
5 as of February 1 of a renewal year.

6 (b) REVIEW.—

7 (1) IN GENERAL.—Not later than February 1 of
8 each renewal year, the President shall review all ex-
9 port controls in effect under this title.

10 (2) CONSULTATION.—

11 (A) REQUIREMENT.—Before completing a
12 review under paragraph (1), the President shall
13 consult with the Committee on Banking, Hous-
14 ing, and Urban Affairs of the Senate and the
15 Committee on International Relations of the
16 House of Representative regarding each export
17 control that is being reviewed.

18 (B) CLASSIFIED CONSULTATION.—The con-
19 sultations may be conducted on a classified basis
20 if the Secretary considers it necessary.

21 (3) PUBLIC COMMENT.—In conducting the review
22 of each export control under paragraph (1), the Presi-
23 dent shall provide a period of not less than 30 days
24 for any interested person to submit comments on re-
25 newal of the export control. The President shall pub-

1 *lish notice of the opportunity for public comment in*
 2 *the Federal Register not less than 45 days before the*
 3 *review is required to be completed.*

4 *(c) REPORT TO CONGRESS.—*

5 *(1) REQUIREMENT.—Before renewing an export*
 6 *control imposed under this title, the President shall*
 7 *submit to the committees of Congress referred to in*
 8 *subsection (b)(2)(A) a report on each export control*
 9 *that the President intends to renew.*

10 *(2) FORM AND CONTENT OF REPORT.—The re-*
 11 *port may be provided on a classified basis if the Sec-*
 12 *retary considers it necessary. Each report shall con-*
 13 *tain the following:*

14 *(A) A clearly stated explanation of the spe-*
 15 *cific United States foreign policy objective that*
 16 *the existing export control was intended to*
 17 *achieve.*

18 *(B) An assessment of—*

19 *(i) the extent to which the existing ex-*
 20 *port control achieved its objectives before re-*
 21 *newal based on the objective criteria estab-*
 22 *lished for evaluating the export control; and*

23 *(ii) the reasons why the existing export*
 24 *control has failed to fully achieve its objec-*
 25 *tives and, if renewed, how the export control*

1 *will achieve that objective before the next re-*
 2 *newal year.*

3 *(C) An updated description and assessment*
 4 *of—*

5 *(i) each of the criteria described in sec-*
 6 *tion 303, and*

7 *(ii) each matter required to be reported*
 8 *under section 304(b) (1) through (8).*

9 *(3) RENEWAL OF EXPORT CONTROL.—The Presi-*
 10 *dent may renew an export control under this title*
 11 *after submission of the report described in paragraph*
 12 *(2) and publication of notice of renewal in the Fed-*
 13 *eral Register.*

14 **SEC. 308. TERMINATION OF CONTROLS UNDER THIS TITLE.**

15 *(a) IN GENERAL.—Notwithstanding any other provi-*
 16 *sion of law, the President—*

17 *(1) shall terminate any export control imposed*
 18 *under this title if the President determines that the*
 19 *control has substantially achieved the objective for*
 20 *which it was imposed; and*

21 *(2) may terminate at any time any export con-*
 22 *trol imposed under this title that is not required by*
 23 *law.*

8 SEC. 309. COMPLIANCE WITH INTERNATIONAL OBLIGA-
9 TIONS.

(1) of items listed on the control list of a multi-lateral export control regime, as defined in section 2(14); or

22 SEC. 310. DESIGNATION OF COUNTRIES SUPPORTING
23 INTERNATIONAL TERRORISM.

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1 *ity to control exports, a license shall be required for the*
 2 *export of any item to a country if the Secretary of State*
 3 *has determined that—*

4 (1) *the government of such country has repeat-*
 5 *edly provided support for acts of international ter-*
 6 *rorism; and*

7 (2) *the export of the item could make a signifi-*
 8 *cant contribution to the military potential of such*
 9 *country, including its military logistics capability, or*
 10 *could enhance the ability of such country to support*
 11 *acts of international terrorism.*

12 (b) *NOTIFICATION.—The Secretary and the Secretary*
 13 *of State shall notify the Committee on International Rela-*
 14 *tions of the House of Representatives and the Committee*
 15 *on Banking, Housing, and Urban Affairs and the Com-*
 16 *mittee on Foreign Relations of the Senate at least 30 days*
 17 *before issuing any license required by subsection (a).*

18 (c) *DETERMINATIONS REGARDING REPEATED SUP-*
 19 *PORT.—Each determination of the Secretary of State under*
 20 *subsection (a)(1), including each determination in effect on*
 21 *the date of the enactment of the Antiterrorism and Arms*
 22 *Export Amendments Act of 1989, shall be published in the*
 23 *Federal Register.*

24 (d) *LIMITATIONS ON RESCINDING DETERMINATION.—*
 25 *A determination made by the Secretary of State under sub-*

1 *section (a)(1) may not be rescinded unless the President*
 2 *submits to the Speaker of the House of Representatives and*
 3 *the Chairman of the Committee on Banking, Housing, and*
 4 *Urban Affairs and the Chairman of the Committee on For-*
 5 *ign Relations of the Senate—*

6 *(1) before the proposed rescission would take ef-*
 7 *fect, a report certifying that—*

8 *(A) there has been a fundamental change in*
 9 *the leadership and policies of the government of*
 10 *the country concerned;*

11 *(B) that government is not supporting acts*
 12 *of international terrorism; and*

13 *(C) that government has provided assur-*
 14 *ances that it will not support acts of inter-*
 15 *national terrorism in the future; or*

16 *(2) at least 45 days before the proposed rescission*
 17 *would take effect, a report justifying the rescission*
 18 *and certifying that—*

19 *(A) the government concerned has not pro-*
 20 *vided any support for international terrorism*
 21 *during the preceding 6-month period; and*

22 *(B) the government concerned has provided*
 23 *assurances that it will not support acts of inter-*
 24 *national terrorism in the future.*

1 (e) *INFORMATION TO BE INCLUDED IN NOTIFICA-*
2 *TION.—The Secretary and the Secretary of State shall in-*
3 *clude in the notification required by subsection (b)—*

4 (1) *a detailed description of the item to be of-*
5 *fered, including a brief description of the capabilities*
6 *of any item for which a license to export is sought;*

7 (2) *the reasons why the foreign country or inter-*
8 *national organization to which the export or transfer*
9 *is proposed to be made needs the item which is the*
10 *subject of such export or transfer and a description*
11 *of the manner in which such country or organization*
12 *intends to use the item;*

13 (3) *the reasons why the proposed export or trans-*
14 *fer is in the national interest of the United States;*

15 (4) *an analysis of the impact of the proposed ex-*
16 *port or transfer on the military capabilities of the*
17 *foreign country or international organization to*
18 *which such export or transfer would be made;*

19 (5) *an analysis of the manner in which the pro-*
20 *posed export would affect the relative military*
21 *strengths of countries in the region to which the item*
22 *which is the subject of such export would be delivered*
23 *and whether other countries in the region have com-*
24 *parable kinds and amounts of the item; and*

1 (6) *an analysis of the impact of the proposed ex-*
 2 *port or transfer on the United States relations with*
 3 *the countries in the region to which the item which*
 4 *is the subject of such export would be delivered.*

5 **SEC. 311. CRIME CONTROL INSTRUMENTS.**

6 (a) *IN GENERAL.*—*Crime control and detection instru-*
 7 *ments and equipment shall be approved for export by the*
 8 *Secretary only pursuant to an individual export license.*
 9 *Notwithstanding any other provision of this Act—*

10 (1) *any determination by the Secretary of what*
 11 *goods or technology shall be included on the list estab-*
 12 *lished pursuant to this subsection as a result of the*
 13 *export restrictions imposed by this section shall be*
 14 *made with the concurrence of the Secretary of State,*
 15 *and*

16 (2) *any determination by the Secretary to ap-*
 17 *prove or deny an export license application to export*
 18 *crime control or detection instruments or equipment*
 19 *shall be made in concurrence with the recommenda-*
 20 *tions of the Secretary of State submitted to the Sec-*
 21 *retary with respect to the application pursuant to sec-*
 22 *tion 401 of this Act,*

23 *except that, if the Secretary does not agree with the Sec-*
 24 *retary of State with respect to any determination under*

1 paragraph (1) or (2), the matter shall be referred to the
2 President for resolution.

3 (b) *EXCEPTION.*—The provisions of this section shall
4 not apply with respect to exports to countries that are mem-
5 bers of the North Atlantic Treaty Organization or to Japan,
6 Australia, or New Zealand, or to such other countries as
7 the President shall designate consistent with the purposes
8 of this section and section 502B of the Foreign Assistance
9 Act of 1961 (22 U.S.C. 2304).

10 **TITLE IV—PROCEDURES FOR EX-** 11 **PORT LICENSES AND INTER-** 12 **AGENCY DISPUTE RESOLU-** 13 **TION**

14 **SEC. 401. EXPORT LICENSE PROCEDURES.**

15 (a) *RESPONSIBILITY OF THE SECRETARY.*—

16 (1) *IN GENERAL.*—All applications for a license
17 or other authorization to export a controlled item
18 shall be filed in such manner and include such infor-
19 mation as the Secretary may, by regulation, pre-
20 scribe.

21 (2) *PROCEDURES.*—In guidance and regulations
22 that implement this section, the Secretary shall de-
23 scribe the procedures required by this section, the re-
24 sponsibilities of the Secretary and of other depart-
25 ments and agencies in reviewing applications, the

1 *rights of the applicant, and other relevant matters af-*
 2 *fecting the review of license applications.*

3 (3) *CALCULATION OF PROCESSING TIMES.—In*
 4 *calculating the processing times set forth in this title,*
 5 *the Secretary shall use calendar days, except that if*
 6 *the final day for a required action falls on a weekend*
 7 *or holiday, that action shall be taken no later than*
 8 *the following business day.*

9 (4) *CRITERIA FOR EVALUATING APPLICATIONS.—*
 10 *In determining whether to grant an application to ex-*
 11 *port a controlled item under this Act, the following*
 12 *criteria shall be considered:*

13 (A) *The characteristics of the controlled*
 14 *item.*

15 (B) *The threat to—*

16 (i) *the national security interests of the*
 17 *United States from items controlled under*
 18 *title II of this Act; or*

19 (ii) *the foreign policy of the United*
 20 *States from items controlled under title III*
 21 *of this Act.*

22 (C) *The country tier designation of the*
 23 *country to which a controlled item is to be ex-*
 24 *ported pursuant to section 203.*

1 (D) *The risk of export diversion or misuse*
 2 *by—*

3 (i) *the exporter;*

4 (ii) *the method of export;*

5 (iii) *the end-user;*

6 (iv) *the country where the end-user is*
 7 *located; and*

8 (v) *the end-use.*

9 (E) *Risk mitigating factors including, but*
 10 *not limited to—*

11 (i) *changing the characteristics of the*
 12 *controlled item;*

13 (ii) *after-market monitoring by the ex-*
 14 *porter; and*

15 (iii) *post-shipment verification.*

16 (b) *INITIAL SCREENING.—*

17 (1) *UPON RECEIPT OF APPLICATION.—Upon re-*
 18 *ceipt of an export license application, the Secretary*
 19 *shall enter and maintain in the records of the Depart-*
 20 *ment information regarding the receipt and status of*
 21 *the application.*

22 (2) *INITIAL PROCEDURES.—*

23 (A) *IN GENERAL.—Not later than 9 days*
 24 *after receiving any license application, the Sec-*
 25 *retary shall—*

1 (i) *contact the applicant if the applica-*
2 *tion is improperly completed or if addi-*
3 *tional information is required, and hold the*
4 *application for a reasonable time while the*
5 *applicant provides the necessary corrections*
6 *or information, and such time shall not be*
7 *included in calculating the time periods*
8 *prescribed in this title;*

9 (ii) *refer the application, through the*
10 *use of a common data base or other means,*
11 *and all information submitted by the appli-*
12 *cant, and all necessary recommendations*
13 *and analyses by the Secretary to the Sec-*
14 *retary of Defense, the Secretary of State,*
15 *and the heads of and other departments and*
16 *agencies the Secretary considers appro-*
17 *priate;*

18 (iii) *ensure that the classification stat-*
19 *ed on the application for the export items is*
20 *correct; and*

21 (iv) *return the application if a license*
22 *is not required.*

23 (B) *REFERRAL NOT REQUIRED.—In the*
24 *event that the head of a department or agency*
25 *determines that certain types of applications*

1 *need not be referred to the department or agency,*
 2 *such department or agency head shall notify the*
 3 *Secretary of the specific types of such applica-*
 4 *tions that the department or agency does not*
 5 *wish to review.*

6 (3) *WITHDRAWAL OF APPLICATION.*—*An appli-*
 7 *cant may, by written notice to the Secretary, with-*
 8 *draw an application at any time before final action.*

9 (c) *ACTION BY OTHER DEPARTMENTS AND AGEN-*
 10 *CIES.*—

11 (1) *REFERRAL TO OTHER AGENCIES.*—*The Sec-*
 12 *retary shall promptly refer a license application to*
 13 *the departments and agencies under subsection (b) to*
 14 *make recommendations and provide information to*
 15 *the Secretary.*

16 (2) *RESPONSIBILITY OF REFERRAL DEPART-*
 17 *MENTS AND AGENCIES.*—*The Secretary of Defense, the*
 18 *Secretary of State, and the heads of other reviewing*
 19 *departments and agencies shall take all necessary ac-*
 20 *tions in a prompt and responsible manner on an ap-*
 21 *plication. Each department or agency reviewing an*
 22 *application under this section shall establish and*
 23 *maintain records properly identifying and moni-*
 24 *toring the status of the matter referred to the depart-*
 25 *ment or agency.*

1 (3) *ADDITIONAL INFORMATION REQUESTS.*—

2 *Each department or agency to which a license appli-*
3 *cation is referred shall specify to the Secretary any*
4 *information that is not in the application that would*
5 *be required for the department or agency to make a*
6 *determination with respect to the application, and the*
7 *Secretary shall promptly request such information*
8 *from the applicant. The time that may elapse between*
9 *the date the information is requested by that depart-*
10 *ment or agency and the date the information is re-*
11 *ceived by that department or agency shall not be in-*
12 *cluded in calculating the time periods prescribed in*
13 *this title.*

14 (4) *TIME PERIOD FOR ACTION BY REFERRAL DE-*

15 *PARTMENTS AND AGENCIES.*—*Within 30 days after*
16 *the Secretary refers an application under this section,*
17 *each department or agency to which an application*
18 *has been referred shall provide the Secretary with a*
19 *recommendation either to approve the license or to*
20 *deny the license. A recommendation that the Sec-*
21 *retary deny a license shall include a statement of rea-*
22 *sons for the recommendation that are consistent with*
23 *the provisions of this title, and shall cite both the spe-*
24 *cific statutory and regulatory basis for the rec-*
25 *ommendation. A department or agency that fails to*

1 *provide a recommendation in accordance with this*
2 *paragraph within that 30-day period shall be deemed*
3 *to have no objection to the decision of the Secretary*
4 *on the application.*

5 *(d) ACTION BY THE SECRETARY.—Not later than 30*
6 *days after the date the application is referred, the Secretary*
7 *shall—*

8 *(1) if there is agreement among the referral de-*
9 *partments and agencies to issue or deny the license—*

10 *(A) issue the license and ensure all appro-*
11 *priate personnel in the Department (including*
12 *the Office of Export Enforcement) are notified of*
13 *all approved license applications; or*

14 *(B) notify the applicant of the intention to*
15 *deny the license; or*

16 *(2) if there is no agreement among the referral*
17 *departments and agencies, notify the applicant that*
18 *the application is subject to the interagency dispute*
19 *resolution process provided for in section 402.*

20 *(e) CONSEQUENCES OF APPLICATION DENIAL.—*

21 *(1) IN GENERAL.—If a determination is made to*
22 *deny a license, the applicant shall be informed in*
23 *writing, consistent with the protection of intelligence*
24 *information sources and methods, by the Secretary*
25 *of—*

1 (A) the determination;

2 (B) the specific statutory and regulatory
3 bases for the proposed denial;

4 (C) what, if any, modifications to, or re-
5 strictions on, the items for which the license was
6 sought would allow such export to be compatible
7 with export controls imposed under this Act, and
8 which officer or employee of the Department
9 would be in a position to discuss modifications
10 or restrictions with the applicant and the spe-
11 cific statutory and regulatory bases for imposing
12 such modifications or restrictions;

13 (D) to the extent consistent with the na-
14 tional security and foreign policy interests of the
15 United States, the specific considerations that led
16 to the determination to deny the application;
17 and

18 (E) the availability of appeal procedures.

19 (2) *PERIOD FOR APPLICANT TO RESPOND.*—The
20 applicant shall have 20 days from the date of the no-
21 tice of intent to deny the application to respond in
22 a manner that addresses and corrects the reasons for
23 the denial. If the applicant does not adequately ad-
24 dress or correct the reasons for denial or does not re-
25 spond, the license shall be denied. If the applicant

1 *does address or correct the reasons for denial, the ap-*
 2 *plication shall be considered in a timely manner.*

3 *(f) APPEALS AND OTHER ACTIONS BY APPLICANT.—*

4 *(1) IN GENERAL.—The Secretary shall establish*
 5 *appropriate procedures for an applicant to appeal to*
 6 *the Secretary the denial of an application or other*
 7 *administrative action under this Act. In any case in*
 8 *which the Secretary proposes to reverse the decision*
 9 *with respect to the application, the appeal under this*
 10 *subsection shall be handled in accordance with the*
 11 *interagency dispute resolution process provided for in*
 12 *section 402(b)(3).*

13 *(2) ENFORCEMENT OF TIME LIMITS.—*

14 *(A) IN GENERAL.—In any case in which an*
 15 *action prescribed in this section is not taken on*
 16 *an application within the time period estab-*
 17 *lished by this section (except in the case of a*
 18 *time period extended under subsection (g) of*
 19 *which the applicant is notified), the applicant*
 20 *may file a petition with the Secretary requesting*
 21 *compliance with the requirements of this section.*
 22 *When such petition is filed, the Secretary shall*
 23 *take immediate steps to correct the situation giv-*
 24 *ing rise to the petition and shall immediately*
 25 *notify the applicant of such steps.*

1 (B) *BRINGING COURT ACTION.*—*If, within*
 2 *20 days after a petition is filed under subpara-*
 3 *graph (A), the processing of the application has*
 4 *not been brought into conformity with the re-*
 5 *quirements of this section, or the processing of*
 6 *the application has been brought into conformity*
 7 *with such requirements but the Secretary has not*
 8 *so notified the applicant, the applicant may*
 9 *bring an action in an appropriate United States*
 10 *district court for an order requiring compliance*
 11 *with the time periods required by this section.*

12 (g) *EXCEPTIONS FROM REQUIRED TIME PERIODS.*—
 13 *The following actions related to processing an application*
 14 *shall not be included in calculating the time periods pre-*
 15 *scribed in this section:*

16 (1) *AGREEMENT OF THE APPLICANT.*—*Delays*
 17 *upon which the Secretary and the applicant mutually*
 18 *agree.*

19 (2) *PRELICENSE CHECKS.*—*A prelicense check*
 20 *(for a period not to exceed 60 days) that may be re-*
 21 *quired to establish the identity and reliability of the*
 22 *recipient of items controlled under this Act, if—*

23 (A) *the need for the prelicense check is de-*
 24 *termined by the Secretary or by another depart-*
 25 *ment or agency in any case in which the request*

1 *for the prelicense check is made by such depart-*
 2 *ment or agency;*

3 *(B) the request for the prelicense check is*
 4 *initiated by the Secretary within 5 days after*
 5 *the determination that the prelicense check is re-*
 6 *quired; and*

7 *(C) the analysis of the result of the*
 8 *prelicense check is completed by the Secretary*
 9 *within 5 days.*

10 *(3) REQUESTS FOR GOVERNMENT-TO-GOVERN-*
 11 *MENT ASSURANCES.—Any request by the Secretary or*
 12 *another department or agency for government-to-gov-*
 13 *ernment assurances of suitable end-uses of items ap-*
 14 *proved for export, when failure to obtain such assur-*
 15 *ances would result in rejection of the application, if—*

16 *(A) the request for such assurances is sent*
 17 *to the Secretary of State within 5 days after the*
 18 *determination that the assurances are required;*

19 *(B) the Secretary of State initiates the re-*
 20 *quest of the relevant government within 10 days*
 21 *thereafter; and*

22 *(C) the license is issued within 5 days after*
 23 *the Secretary receives the requested assurances.*

24 *(4) EXCEPTION.—Whenever a prelicense check*
 25 *described in paragraph (2) or assurances described in*

1 *paragraph (3) are not requested within the time peri-*
 2 *ods set forth therein, then the time expended for such*
 3 *prelicense check or assurances shall be included in*
 4 *calculating the time periods established by this sec-*
 5 *tion.*

6 (5) *MULTILATERAL REVIEW.*—*Multilateral re-*
 7 *view of a license application to the extent that such*
 8 *multilateral review is required by a relevant multilat-*
 9 *eral regime.*

10 (6) *CONGRESSIONAL NOTIFICATION.*—*Such time*
 11 *as is required for mandatory congressional notifica-*
 12 *tions under this Act.*

13 (7) *CONSULTATIONS.*—*Consultation with foreign*
 14 *governments, if such consultation is provided for by*
 15 *a relevant multilateral regime as a precondition for*
 16 *approving a license.*

17 (h) *CLASSIFICATION REQUESTS AND OTHER INQUIR-*
 18 *IES.*—

19 (1) *CLASSIFICATION REQUESTS.*—*In any case in*
 20 *which the Secretary receives a written request asking*
 21 *for the proper classification of an item on the Control*
 22 *List or the applicability of licensing requirements*
 23 *under this title, the Secretary shall promptly notify*
 24 *the Secretary of Defense and the head of any depart-*
 25 *ment or agency the Secretary considers appropriate.*

1 *The Secretary shall, within 14 days after receiving*
 2 *the request, inform the person making the request of*
 3 *the proper classification.*

4 (2) *OTHER INQUIRIES.—In any case in which*
 5 *the Secretary receives a written request for informa-*
 6 *tion under this Act, the Secretary shall, within 30*
 7 *days after receiving the request, reply with that infor-*
 8 *mation to the person making the request.*

9 **SEC. 402. INTERAGENCY DISPUTE RESOLUTION PROCESS.**

10 (a) *IN GENERAL.—All license applications on which*
 11 *agreement cannot be reached shall be referred to the inter-*
 12 *agency dispute resolution process for decision.*

13 (b) *INTERAGENCY DISPUTE RESOLUTION PROCESS.—*

14 (1) *INITIAL RESOLUTION.—The Secretary shall*
 15 *establish, select the chairperson of, and determine pro-*
 16 *cedures for an interagency committee to review ini-*
 17 *tially all license applications described in subsection*
 18 *(a) with respect to which the Secretary and any of the*
 19 *referral departments and agencies are not in agree-*
 20 *ment. The chairperson shall consider the positions of*
 21 *all the referral departments and agencies (which shall*
 22 *be included in the minutes described in subsection*
 23 *(c)(2)) and make a decision on the license applica-*
 24 *tion, including appropriate revisions or conditions*
 25 *thereto.*

1 (2) *INTELLIGENCE COMMUNITY.*—*The analytic*
2 *product of the intelligence community should be fully*
3 *considered with respect to any proposed license under*
4 *this title.*

5 (3) *FURTHER RESOLUTION.*—*The President shall*
6 *establish additional levels for review or appeal of any*
7 *matter that cannot be resolved pursuant to the process*
8 *described in paragraph (1). Each such review shall—*

9 (A) *provide for decision-making based on*
10 *the majority vote of the participating depart-*
11 *ments and agencies;*

12 (B) *provide that a department or agency*
13 *that fails to take a timely position, citing the*
14 *specific statutory and regulatory bases for a po-*
15 *sition, shall be deemed to have no objection to the*
16 *pending decision;*

17 (C) *provide that any decision of an inter-*
18 *agency committee established under paragraph*
19 *(1) or interagency dispute resolution process es-*
20 *tablished under this paragraph may be escalated*
21 *to the next higher level of review at the request*
22 *of an official appointed by the President, by and*
23 *with the advice of the Senate, or an officer prop-*
24 *erly acting in such capacity, of a department or*
25 *agency that participated in the interagency com-*

1 *mittee or dispute resolution process that made*
 2 *the decision; and*

3 *(D) ensure that matters are resolved or re-*
 4 *ferred to the President not later than 90 days*
 5 *after the date the completed license application is*
 6 *referred by the Secretary.*

7 *(c) FINAL ACTION.—*

8 *(1) IN GENERAL.—Once a final decision is made*
 9 *under subsection (b), the Secretary shall promptly—*

10 *(A) issue the license and ensure that all ap-*
 11 *propriate personnel in the Department (includ-*
 12 *ing the Office of Export Enforcement) are noti-*
 13 *fied of all approved license applications; or*

14 *(B) notify the applicant of the intention to*
 15 *deny the application.*

16 *(2) MINUTES.—The interagency committee and*
 17 *each level of the interagency dispute resolution process*
 18 *shall keep reasonably detailed minutes of all meetings.*
 19 *On each matter before the interagency committee or*
 20 *before any other level of the interagency dispute reso-*
 21 *lution process in which members disagree, each mem-*
 22 *ber shall clearly state the reasons for the member's po-*
 23 *sition and the reasons shall be entered in the minutes.*

1 **TITLE V—INTERNATIONAL AR-**
 2 **RANGEMENTS; FOREIGN BOY-**
 3 **COTTS; SANCTIONS; AND EN-**
 4 **FORCEMENT**

5 **SEC. 501. INTERNATIONAL ARRANGEMENTS.**

6 (a) *MULTILATERAL EXPORT CONTROL REGIMES.—*

7 (1) *POLICY.—It is the policy of the United*
 8 *States to seek multilateral arrangements that support*
 9 *the national security objectives of the United States*
 10 *(as described in title II) and that establish fairer and*
 11 *more predictable competitive opportunities for United*
 12 *States exporters.*

13 (2) *PARTICIPATION IN EXISTING REGIMES.—Con-*
 14 *gress encourages the United States to continue its ac-*
 15 *tive participation in and to strengthen existing mul-*
 16 *tilateral export control regimes.*

17 (3) *PARTICIPATION IN NEW REGIMES.—It is the*
 18 *policy of the United States to participate in addi-*
 19 *tional multilateral export control regimes if such par-*
 20 *ticipation would serve the national security interests*
 21 *of the United States.*

22 (b) *ANNUAL REPORT ON MULTILATERAL EXPORT CON-*
 23 *TROL REGIMES.—Not later than February 1 of each year,*
 24 *the President shall submit to the Committee on Banking,*
 25 *Housing, and Urban Affairs of the Senate and the Com-*

1 *mittee on International Relations of the House of Rep-*
 2 *resentatives a report evaluating the effectiveness of each*
 3 *multilateral export control regime, including an assessment*
 4 *of the steps undertaken pursuant to subsections (c) and (d).*
 5 *The report, or any part of this report, may be submitted*
 6 *in classified form to the extent the President considers nec-*
 7 *essary.*

8 (c) *STANDARDS FOR MULTILATERAL EXPORT CON-*
 9 *TROL REGIMES.—The President shall take steps to establish*
 10 *the following features in any multilateral export control re-*
 11 *gime in which the United States is participating or may*
 12 *participate:*

13 (1) *FULL MEMBERSHIP.—All supplier countries*
 14 *are members of the regime, and the policies and ac-*
 15 *tivities of the members are consistent with the objec-*
 16 *tives and membership criteria of the multilateral ex-*
 17 *port control regime.*

18 (2) *EFFECTIVE ENFORCEMENT AND COMPLI-*
 19 *ANCE.—The regime promotes enforcement and compli-*
 20 *ance with the regime’s rules and guidelines.*

21 (3) *PUBLIC UNDERSTANDING.—The regime*
 22 *makes an effort to enhance public understanding of*
 23 *the purpose and procedures of the multilateral export*
 24 *control regime.*

1 (4) *EFFECTIVE IMPLEMENTATION PROCEDURE*.—*The multilateral export control regime has*
 2 *procedures for the uniform and consistent interpreta-*
 3 *tion and implementation of its rules and guidelines.*

5 (5) *ENHANCED COOPERATION WITH REGIME*
 6 *NONMEMBERS*.—*There is agreement among the mem-*
 7 *bers of the multilateral export control regime to—*

8 (A) *cooperate with governments outside the*
 9 *regime to restrict the export of items controlled*
 10 *by such regime; and*

11 (B) *establish an ongoing mechanism in the*
 12 *regime to coordinate planning and implementa-*
 13 *tion of export control measures related to such*
 14 *cooperation.*

15 (6) *PERIODIC HIGH-LEVEL MEETINGS*.—*There*
 16 *are regular periodic meetings of high-level representa-*
 17 *tives of the governments of members of the multilat-*
 18 *eral export control regime for the purpose of coordi-*
 19 *nating export control policies and issuing policy*
 20 *guidance to members of the regime.*

21 (7) *COMMON LIST OF CONTROLLED ITEMS*.—
 22 *There is agreement on a common list of items con-*
 23 *trolled by the multilateral export control regime.*

24 (8) *REGULAR UPDATES OF COMMON LIST*.—
 25 *There is a procedure for removing items from the list*

1 *of controlled items when the control of such items no*
 2 *longer serves the objectives of the members of the mul-*
 3 *tilateral export control regime.*

4 (9) *TREATMENT OF CERTAIN COUNTRIES.—There*
 5 *is agreement to prevent the export or diversion of the*
 6 *most sensitive items to countries whose activities are*
 7 *threatening to the national security of the United*
 8 *States or its allies.*

9 (10) *HARMONIZATION OF LICENSE APPROVAL*
 10 *PROCEDURES.—There is harmonization among the*
 11 *members of the regime of their national export license*
 12 *approval procedures, practices, and standards.*

13 (11) *UNDERCUTTING.—There is a limit with re-*
 14 *spect to when members of a multilateral export con-*
 15 *trol regime—*

16 (A) *grant export licenses for any item that*
 17 *is substantially identical to or directly competi-*
 18 *tive with an item controlled pursuant to the re-*
 19 *gime, where the United States has denied an ex-*
 20 *port license for such item, or*

21 (B) *approve exports to a particular end*
 22 *user to which the United States has denied ex-*
 23 *port license for a similar item.*

24 (d) *STANDARDS FOR NATIONAL EXPORT CONTROL*
 25 *SYSTEMS.—The President shall take steps to attain the co-*

1 operation of members of each regime in implementing effec-
 2 tive national export control systems containing the fol-
 3 lowing features:

4 (1) *EXPORT CONTROL LAW.*—Enforcement au-
 5 thority, civil and criminal penalties, and statutes of
 6 limitations are sufficient to deter potential violations
 7 and punish violators under the member's export con-
 8 trol law.

9 (2) *LICENSE APPROVAL PROCESS.*—The system
 10 for evaluating export license applications includes
 11 sufficient technical expertise to assess the licensing
 12 status of exports and ensure the reliability of end
 13 users.

14 (3) *ENFORCEMENT.*—The enforcement mecha-
 15 nism provides authority for trained enforcement offi-
 16 cers to investigate and prevent illegal exports.

17 (4) *DOCUMENTATION.*—There is a system of ex-
 18 port control documentation and verification with re-
 19 spect to controlled items.

20 (5) *INFORMATION.*—There are procedures for the
 21 coordination and exchange of information concerning
 22 licensing, end users, and enforcement with other mem-
 23 bers of the multilateral export control regime.

24 (6) *RESOURCES.*—The member has devoted ade-
 25 quate resources to administer effectively the authori-

1 *ties, systems, mechanisms, and procedures described*
 2 *in paragraphs (1) through (5).*

3 *(e) OBJECTIVES REGARDING MULTILATERAL EXPORT*
 4 *CONTROL REGIMES.—The President shall seek to achieve*
 5 *the following objectives with regard to multilateral export*
 6 *control regimes:*

7 *(1) STRENGTHEN EXISTING REGIMES.—Strengthen*
 8 *existing multilateral export control regimes—*

9 *(A) by creating a requirement to share in-*
 10 *formation about export license applications*
 11 *among members before a member approves an ex-*
 12 *port license; and*

13 *(B) harmonizing national export license ap-*
 14 *proval procedures and practices, including the*
 15 *elimination of undercutting.*

16 *(2) REVIEW AND UPDATE.—Review and update*
 17 *multilateral regime export control lists with other*
 18 *members, taking into account—*

19 *(A) national security concerns;*

20 *(B) the controllability of items; and*

21 *(C) the costs and benefits of controls.*

22 *(3) ENCOURAGE COMPLIANCE BY NONMEM-*
 23 *BERS.—Encourage nonmembers of the multilateral*
 24 *export control regime—*

1 (A) to strengthen their national export con-
2 trol regimes and improve enforcement;

3 (B) to adhere to the appropriate multilat-
4 eral export control regime; and

5 (C) not to undermine an existing multilat-
6 eral export control regime by exporting con-
7 trolled items in a manner inconsistent with the
8 guidelines of the regime.

9 (f) *TRANSPARENCY OF MULTILATERAL EXPORT CON-*
10 *TROL REGIMES.*—

11 (1) *PUBLICATION OF INFORMATION ON EACH EX-*
12 *ISTING REGIME.*—Not later than 120 days after the
13 date of enactment of this Act, the Secretary shall, for
14 each multilateral export control regime, to the extent
15 that it is not inconsistent with the arrangements of
16 that regime (in the judgment of the Secretary of
17 State) or with the national interest, publish in the
18 Federal Register and post on the Department of Com-
19 merce website the following information with respect
20 to the regime:

21 (A) The purposes of the regime.

22 (B) The members of the regime.

23 (C) The export licensing policy of the re-
24 gime.

1 (D) *The items that are subject to export*
2 *controls under the regime, together with all pub-*
3 *lic notes, understandings, and other aspects of*
4 *the agreement of the regime, and all changes*
5 *thereto.*

6 (E) *Any countries, end uses, or end users*
7 *that are subject to the export controls of the re-*
8 *gime.*

9 (F) *Rules of interpretation.*

10 (G) *Major policy actions.*

11 (H) *The rules and procedures of the regime*
12 *for establishing and modifying any matter de-*
13 *scribed in subparagraphs (A) through (G) and*
14 *for reviewing export license applications.*

15 (2) *NEW REGIMES.*—*Not later than 60 days after*
16 *the United States joins or organizes a new multilat-*
17 *eral export control regime, the Secretary shall, to the*
18 *extent that it is not inconsistent with arrangements*
19 *under the regime (in the judgment of the Secretary of*
20 *State) or with the national interest, publish in the*
21 *Federal Register and post on the Department of Com-*
22 *merce website the information described in subpara-*
23 *graphs (A) through (H) of paragraph (1) with respect*
24 *to the regime.*

1 (3) *PUBLICATION OF CHANGES.*—Not later than
 2 60 days after a multilateral export control regime
 3 adopts any change in the information published
 4 under this subsection, the Secretary shall, to the ex-
 5 tent not inconsistent with the arrangements under the
 6 regime or the national interest, publish such changes
 7 in the Federal Register and post such changes on the
 8 Department of Commerce website.

9 (g) *SUPPORT OF OTHER COUNTRIES' EXPORT CON-*
 10 *TROL SYSTEMS.*—The Secretary is encouraged to continue
 11 to—

12 (1) *participate in training of, and provide*
 13 *training to, officials of other countries on the prin-*
 14 *ciples and procedures for implementing effective ex-*
 15 *port controls; and*

16 (2) *participate in any such training provided by*
 17 *other departments and agencies of the United States.*

18 **SEC. 502. FOREIGN BOYCOTTS.**

19 (a) *PURPOSES.*—The purposes of this section are as
 20 *follows:*

21 (1) *To counteract restrictive trade practices or*
 22 *boycotts fostered or imposed by foreign countries*
 23 *against other countries friendly to the United States*
 24 *or against any United States person.*

1 (2) *To encourage and, in specified cases, require*
2 *United States persons engaged in the export of items*
3 *to refuse to take actions, including furnishing infor-*
4 *mation or entering into or implementing agreements,*
5 *which have the effect of furthering or supporting the*
6 *restrictive trade practices or boycotts fostered or im-*
7 *posed by any foreign country against a country*
8 *friendly to the United States or against any United*
9 *States person.*

10 (b) *PROHIBITIONS AND EXCEPTIONS.—*

11 (1) *PROHIBITIONS.—In order to carry out the*
12 *purposes set forth in subsection (a), the President*
13 *shall issue regulations prohibiting any United States*
14 *person, with respect to that person's activities in the*
15 *interstate or foreign commerce of the United States,*
16 *from taking or knowingly agreeing to take any of the*
17 *following actions with intent to comply with, further,*
18 *or support any boycott fostered or imposed by a for-*
19 *ign country against a country that is friendly to the*
20 *United States and is not itself the object of any form*
21 *of boycott pursuant to United States law or regula-*
22 *tion:*

23 (A) *Refusing, or requiring any other person*
24 *to refuse, to do business with or in the boycotted*
25 *country, with any business concern organized*

1 *under the laws of the boycotted country, with*
2 *any national or resident of the boycotted coun-*
3 *try, or with any other person, pursuant to an*
4 *agreement with, or requirement of, or a request*
5 *from or on behalf of the boycotting country (sub-*
6 *ject to the condition that the intent required to*
7 *be associated with such an act in order to con-*
8 *stitute a violation of the prohibition is not indi-*
9 *cated solely by the mere absence of a business re-*
10 *lationship with or in the boycotted country, with*
11 *any business concern organized under the laws of*
12 *the boycotted country, with any national or resi-*
13 *dent of the boycotted country, or with any other*
14 *person).*

15 *(B) Refusing, or requiring any other person*
16 *to refuse, to employ or otherwise discriminate*
17 *against any United States person on the basis of*
18 *the race, religion, sex, or national origin of that*
19 *person or of any owner, officer, director, or em-*
20 *ployee of such person.*

21 *(C) Furnishing information with respect to*
22 *the race, religion, sex, or national origin of any*
23 *United States person or of any owner, officer, di-*
24 *rector, or employee of such person.*

1 (D) *Furnishing information (other than*
2 *furnishing normal business information in a*
3 *commercial context, as defined by the Secretary)*
4 *about whether any person has, has had, or pro-*
5 *poses to have any business relationship (includ-*
6 *ing a relationship by way of sale, purchase, legal*
7 *or commercial representation, shipping or other*
8 *transport, insurance, investment, or supply)*
9 *with or in the boycotted country, with any busi-*
10 *ness concern organized under the laws of the boy-*
11 *cotted country, with any national or resident of*
12 *the boycotted country, or with any other person*
13 *that is known or believed to be restricted from*
14 *having any business relationship with or in the*
15 *boycotting country.*

16 (E) *Furnishing information about whether*
17 *any person is a member of, has made a contribu-*
18 *tion to, or is otherwise associated with or in-*
19 *volved in the activities of any charitable or fra-*
20 *ternal organization which supports the boycotted*
21 *country.*

22 (F) *Paying, honoring, confirming, or other-*
23 *wise implementing a letter of credit which con-*
24 *tains any condition or requirement the compli-*
25 *ance with which is prohibited by regulations*

1 *issued pursuant to this paragraph, and no*
 2 *United States person shall, as a result of the ap-*
 3 *plication of this paragraph, be obligated to pay*
 4 *or otherwise honor or implement such letter of*
 5 *credit.*

6 (2) *EXCEPTIONS.—Regulations issued pursuant*
 7 *to paragraph (1) shall provide exceptions for—*

8 (A) *compliance, or agreement to comply,*
 9 *with requirements—*

10 (i) *prohibiting the import of items*
 11 *from the boycotted country or items pro-*
 12 *duced or provided, by any business concern*
 13 *organized under the laws of the boycotted*
 14 *country or by nationals or residents of the*
 15 *boycotted country; or*

16 (ii) *prohibiting the shipment of items*
 17 *to the boycotting country on a carrier of the*
 18 *boycotted country or by a route other than*
 19 *that prescribed by the boycotting country or*
 20 *the recipient of the shipment;*

21 (B) *compliance, or agreement to comply,*
 22 *with import and shipping document require-*
 23 *ments with respect to the country of origin, the*
 24 *name of the carrier and route of shipment, the*
 25 *name of the supplier of the shipment, or the*

1 *name of the provider of other services, except*
2 *that, for purposes of applying any exception*
3 *under this subparagraph, no information know-*
4 *ingly furnished or conveyed in response to such*
5 *requirements may be stated in negative, black-*
6 *listing, or similar exclusionary terms, other than*
7 *with respect to carriers or route of shipment as*
8 *may be permitted by such regulations in order to*
9 *comply with precautionary requirements pro-*
10 *tecting against war risks and confiscation;*

11 *(C) compliance, or agreement to comply, in*
12 *the normal course of business with the unilateral*
13 *and specific selection by a boycotting country, or*
14 *a national or resident thereof, or carriers, insur-*
15 *ers, suppliers of services to be performed within*
16 *the boycotting country, or specific items which,*
17 *in the normal course of business, are identifiable*
18 *by source when imported into the boycotting*
19 *country;*

20 *(D) compliance, or agreement to comply,*
21 *with export requirements of the boycotting coun-*
22 *try relating to shipment or transshipment of ex-*
23 *ports to the boycotted country, to any business*
24 *concern of or organized under the laws of the*

1 *boycotted country, or to any national or resident*
2 *of the boycotted country;*

3 *(E) compliance by an individual, or agree-*
4 *ment by an individual to comply, with the im-*
5 *migration or passport requirements of any coun-*
6 *try with respect to such individual or any mem-*
7 *ber of such individual's family or with requests*
8 *for information regarding requirements of em-*
9 *ployment of such individual within the boy-*
10 *cotting country; and*

11 *(F) compliance by a United States person*
12 *resident in a foreign country, or agreement by*
13 *such a person to comply, with the laws of the*
14 *country with respect to the person's activities ex-*
15 *clusively therein, and such regulations may con-*
16 *tain exceptions for such resident complying with*
17 *the laws or regulations of the foreign country*
18 *governing imports into such country of*
19 *trademarked, trade-named, or similarly specifi-*
20 *cally identifiable products, or components of*
21 *products for such person's own use, including the*
22 *performance of contractual services within that*
23 *country.*

24 *(3) LIMITATION ON EXCEPTIONS.—Regulations*
25 *issued pursuant to paragraphs (2)(C) and (2)(F)*

1 *shall not provide exceptions from paragraphs (1)(B)*
 2 *and (1)(C).*

3 (4) *ANTITRUST AND CIVIL RIGHTS LAWS NOT AF-*
 4 *FECTED.—Nothing in this subsection may be con-*
 5 *strued to supersede or limit the operation of the anti-*
 6 *trust or civil rights laws of the United States.*

7 (5) *EVASION.—This section applies to any trans-*
 8 *action or activity undertaken by or through a United*
 9 *States person or any other person with intent to*
 10 *evade the provisions of this section or the regulations*
 11 *issued pursuant to this subsection. The regulations*
 12 *issued pursuant to this section shall expressly provide*
 13 *that the exceptions set forth in paragraph (2) do not*
 14 *permit activities or agreements (expressed or implied*
 15 *by a course of conduct, including a pattern of re-*
 16 *sponses) that are otherwise prohibited, pursuant to*
 17 *the intent of such exceptions.*

18 (c) *ADDITIONAL REGULATIONS AND REPORTS.—*

19 (1) *REGULATIONS.—In addition to the regula-*
 20 *tions issued pursuant to subsection (b), regulations*
 21 *issued pursuant to title III shall implement the pur-*
 22 *poses set forth in subsection (a).*

23 (2) *REPORTS BY UNITED STATES PERSONS.—The*
 24 *regulations shall require that any United States per-*
 25 *son receiving a request to furnish information, enter*

1 into or implement an agreement, or take any other
2 action referred to in subsection (a) shall report that
3 request to the Secretary, together with any other in-
4 formation concerning the request that the Secretary
5 determines appropriate. The person shall also submit
6 to the Secretary a statement regarding whether the
7 person intends to comply, and whether the person has
8 complied, with the request. Any report filed pursuant
9 to this paragraph shall be made available promptly
10 for public inspection and copying, except that infor-
11 mation regarding the quantity, description, and value
12 of any item to which such report relates may be treat-
13 ed as confidential if the Secretary determines that
14 disclosure of that information would place the United
15 States person involved at a competitive disadvantage.
16 The Secretary shall periodically transmit summaries
17 of the information contained in the reports to the Sec-
18 retary of State for such action as the Secretary of
19 State, in consultation with the Secretary, considers
20 appropriate to carry out the purposes set forth in sub-
21 section (a).

22 (d) *PREEMPTION*.—The provisions of this section and
23 the regulations issued under this section shall preempt any
24 law, rule, or regulation that—

(1) is a law, rule, or regulation of any of the several States or the District of Columbia, or any of the territories or possessions of the United States, or of any governmental subdivision thereof; and

(2) pertains to participation in, compliance with, implementation of, or the furnishing of information regarding restrictive trade practices or boycotts fostered or imposed by foreign countries against other countries.

SEC. 503. PENALTIES.

(a) *CRIMINAL PENALTIES.*—

(1) *VIOLATIONS BY AN INDIVIDUAL.*—Any individual who willfully violates, conspires to violate, or attempts to violate any provision of this Act or any regulation, license, or order issued under this Act shall be fined up to 10 times the value of the exports involved or \$1,000,000, whichever is greater, imprisoned for not more than 10 years, or both, for each violation.

(2) *VIOLATIONS BY A PERSON OTHER THAN AN INDIVIDUAL.*—Any person other than an individual who willfully violates, conspires to violate, or attempts to violate any provision of this Act or any regulation, license, or order issued under this Act shall be fined up to 10 times the value of the exports in-

1 *involved or \$5,000,000, whichever is greater, for each*
2 *violation.*

3 *(b) FORFEITURE OF PROPERTY INTEREST AND PRO-*
4 *CEEDS.—*

5 *(1) FORFEITURE.—Any person who is convicted*
6 *under paragraph (1) or (2) of subsection (a) shall, in*
7 *addition to any other penalty, forfeit to the United*
8 *States—*

9 *(A) any of that person’s security or other*
10 *interest in, claim against, or property or con-*
11 *tractual rights of any kind in the tangible items*
12 *that were the subject of the violation;*

13 *(B) any of that person’s security or other*
14 *interest in, claim against, or property or con-*
15 *tractual rights of any kind in the tangible prop-*
16 *erty that was used in the export or attempt to*
17 *export that was the subject of the violation; and*

18 *(C) any of that person’s property consti-*
19 *tuting, or derived from, any proceeds obtained*
20 *directly or indirectly as a result of the violation.*

21 *(2) PROCEDURES.—The procedures in any for-*
22 *feiture under this subsection, and the duties and au-*
23 *thority of the courts of the United States and the At-*
24 *torney General with respect to any forfeiture action*
25 *under this subsection, or with respect to any property*

1 that may be subject to forfeiture under this subsection,
 2 shall be governed by the provisions of chapter 46 of
 3 title 18, United States Code (relating to criminal for-
 4 feiture), to the same extent as property subject to for-
 5 feiture under that chapter.

6 (c) *CIVIL PENALTIES; ADMINISTRATIVE SANCTIONS.*—

7 (1) *CIVIL PENALTIES.*—The Secretary may im-
 8 pose a civil penalty of up to \$500,000 for each viola-
 9 tion of a provision of this Act or any regulation, li-
 10 cense, or order issued under this Act. A civil penalty
 11 under this paragraph may be in addition to, or in
 12 lieu of, any other liability or penalty which may be
 13 imposed for such a violation.

14 (2) *DENIAL OF EXPORT PRIVILEGES.*—The Sec-
 15 retary may deny the export privileges of any person,
 16 including the suspension or revocation of the author-
 17 ity of such person to export or receive United States-
 18 origin items subject to this Act, for a violation of a
 19 provision of this Act or any regulation, license, or
 20 order issued under this Act.

21 (3) *EXCLUSION FROM PRACTICE.*—The Secretary
 22 may exclude any person acting as an attorney, ac-
 23 countant, consultant, freight forwarder, or in any
 24 other representative capacity from participating be-

1 *fore the Department with respect to a license applica-*
 2 *tion or any other matter under this Act.*

3 *(d) PAYMENT OF CIVIL PENALTIES.—*

4 *(1) PAYMENT AS CONDITION OF FURTHER EX-*
 5 *PORT PRIVILEGES.—The payment of a civil penalty*
 6 *imposed under subsection (c) may be made a condi-*
 7 *tion for the granting, restoration, or continuing va-*
 8 *lidity of any export license, permission, or privilege*
 9 *granted or to be granted to the person upon whom*
 10 *such penalty is imposed. The period for which the*
 11 *payment of a penalty may be made such a condition*
 12 *may not exceed 1 year after the date on which the*
 13 *payment is due.*

14 *(2) DEFERRAL OR SUSPENSION.—*

15 *(A) IN GENERAL.—The payment of a civil*
 16 *penalty imposed under subsection (c) may be de-*
 17 *ferred or suspended in whole or in part for a pe-*
 18 *riod no longer than any probation period (which*
 19 *may exceed 1 year) that may be imposed upon*
 20 *the person on whom the penalty is imposed.*

21 *(B) NO BAR TO COLLECTION OF PENALTY.—*

22 *A deferral or suspension under subparagraph (A)*
 23 *shall not operate as a bar to the collection of the*
 24 *penalty concerned in the event that the condi-*

1 *tions of the suspension, deferral, or probation are*
 2 *not fulfilled.*

3 (3) *TREATMENT OF PAYMENTS.*—*Any amount*
 4 *paid in satisfaction of a civil penalty imposed under*
 5 *subsection (c) shall be covered into the Treasury as*
 6 *miscellaneous receipts.*

7 (e) *REFUNDS.*—

8 (1) *AUTHORITY.*—

9 (A) *IN GENERAL.*—*The Secretary may, in*
 10 *the Secretary's discretion, refund any civil pen-*
 11 *alty imposed under subsection (c) on the ground*
 12 *of a material error of fact or law in imposition*
 13 *of the penalty.*

14 (B) *LIMITATION.*—*A civil penalty may not*
 15 *be refunded under subparagraph (A) later than*
 16 *2 years after payment of the penalty.*

17 (2) *PROHIBITION ON ACTIONS FOR REFUND.*—
 18 *Notwithstanding section 1346(a) of title 28, United*
 19 *States Code, no action for the refund of any civil pen-*
 20 *alty referred to in paragraph (1) may be maintained*
 21 *in any court.*

22 (f) *EFFECT OF OTHER CONVICTIONS.*—

23 (1) *DENIAL OF EXPORT PRIVILEGES.*—*Any per-*
 24 *son convicted of a violation of—*

1 (A) a provision of this Act or the Export
2 Administration Act of 1979,

3 (B) a provision of the International Emer-
4 gency Economic Powers Act (50 U.S.C. 1701 et
5 seq.),

6 (C) section 793, 794, or 798 of title 18,
7 United States Code,

8 (D) section 4(b) of the Internal Security Act
9 of 1950 (50 U.S.C. 783(b)),

10 (E) section 38 of the Arms Export Control
11 Act (22 U.S.C. 2778),

12 (F) section 16 of the Trading with the
13 Enemy Act (50 U.S.C. App. 16),

14 (G) any regulation, license, or order issued
15 under any provision of law listed in subpara-
16 graph (A), (B), (C), (D), (E), or (F),

17 (H) section 371 or 1001 of title 18, United
18 States Code, if in connection with the export of
19 controlled items under this Act or any regula-
20 tion, license, or order issued under the Inter-
21 national Emergency Economic Powers Act, or
22 the export of items controlled under the Arms
23 Export Control Act,

24 (I) section 175 of title 18, United States
25 Code,

1 (J) a provision of the Atomic Energy Act
2 (42 U.S.C. 201 et seq.),

3 (K) section 831 of title 18, United States
4 Code, or

5 (L) section 2332a of title 18, United States
6 Code,

7 may, at the discretion of the Secretary, be denied ex-
8 port privileges under this Act for a period not to ex-
9 ceed 10 years from the date of the conviction. The
10 Secretary may also revoke any export license under
11 this Act in which such person had an interest at the
12 time of the conviction.

13 (2) *RELATED PERSONS.*—The Secretary may ex-
14 ercise the authority under paragraph (1) with respect
15 to any person related through affiliation, ownership,
16 control, or position of responsibility to a person con-
17 victed of any violation of a law set forth in para-
18 graph (1) upon a showing of such relationship with
19 the convicted person. The Secretary shall make such
20 showing only after providing notice and opportunity
21 for a hearing.

22 (g) *STATUTE OF LIMITATIONS.*—

23 (1) *IN GENERAL.*—Except as provided in para-
24 graph (2), a proceeding in which a civil penalty or
25 other administrative sanction (other than a tem-

porary denial order) is sought under subsection (c) may not be instituted more than 5 years after the later of the date of the alleged violation or the date of discovery of the alleged violation.

(2) *EXCEPTION.*—

(A) *TOLLING.*—In any case in which a criminal indictment alleging a violation under subsection (a) is returned within the time limits prescribed by law for the institution of such action, the limitation under paragraph (1) for bringing a proceeding to impose a civil penalty or other administrative sanction under this section shall, upon the return of the criminal indictment, be tolled against all persons named as a defendant.

(B) *DURATION.*—The tolling of the limitation with respect to a defendant under subparagraph (A) as a result of a criminal indictment shall continue for a period of 6 months from the date on which the conviction of the defendant becomes final, the indictment against the defendant is dismissed, or the criminal action has concluded.

1 (h) *VIOLATIONS DEFINED BY REGULATION.*—*Nothing*
 2 *in this section shall limit the authority of the Secretary to*
 3 *define by regulation violations under this Act.*

4 (i) *CONSTRUCTION.*—*Nothing in subsection (c), (d),*
 5 *(e), (f), or (g) limits—*

6 (1) *the availability of other administrative or ju-*
 7 *dicial remedies with respect to a violation of a provi-*
 8 *sion of this Act, or any regulation, order, or license*
 9 *issued under this Act;*

10 (2) *the authority to compromise and settle ad-*
 11 *ministrative proceedings brought with respect to any*
 12 *such violation; or*

13 (3) *the authority to compromise, remit, or miti-*
 14 *gate seizures and forfeitures pursuant to section 1(b)*
 15 *of title VI of the Act of June 15, 1917 (22 U.S.C.*
 16 *401(b)).*

17 **SEC. 504. MISSILE PROLIFERATION CONTROL VIOLATIONS.**

18 (a) *VIOLATIONS BY UNITED STATES PERSONS.*—

19 (1) *SANCTIONS.*—

20 (A) *IN GENERAL.*—*If the President deter-*
 21 *mines that a United States person knowingly—*

22 (i) *exports, transfers, or otherwise en-*
 23 *gages in the trade of any item on the*
 24 *MTCR Annex, in violation of the provisions*
 25 *of section 38 (22 U.S.C. 2778) or chapter 7*

1 *of the Arms Export Control Act, title II or*
2 *III of this Act, or any regulations or orders*
3 *issued under any such provisions,*

4 (ii) *conspires to or attempts to engage*
5 *in such export, transfer, or trade, or*

6 (iii) *facilitates such export, transfer, or*
7 *trade by any other person,*

8 *then the President shall impose the applicable*
9 *sanctions described in subparagraph (B).*

10 (B) *SANCTIONS DESCRIBED.—The sanctions*
11 *which apply to a United States person under*
12 *subparagraph (A) are the following:*

13 (i) *If the item on the MTCR Annex in-*
14 *volved in the export, transfer, or trade is*
15 *missile equipment or technology within cat-*
16 *egory II of the MTCR Annex, then the*
17 *President shall deny to such United States*
18 *person, for a period of 2 years, licenses for*
19 *the transfer of missile equipment or tech-*
20 *nology controlled under this Act.*

21 (ii) *If the item on the MTCR Annex*
22 *involved in the export, transfer, or trade is*
23 *missile equipment or technology within cat-*
24 *egory I of the MTCR Annex, then the Presi-*
25 *dent shall deny to such United States per-*

1 son, for a period of not less than 2 years,
 2 all licenses for items the export of which is
 3 controlled under this Act.

4 (2) *DISCRETIONARY SANCTIONS.*—*In the case of*
 5 *any determination referred to in paragraph (1), the*
 6 *Secretary may pursue any other appropriate pen-*
 7 *alties under section 503.*

8 (3) *WAIVER.*—*The President may waive the im-*
 9 *position of sanctions under paragraph (1) on a per-*
 10 *son with respect to an item if the President certifies*
 11 *to Congress that—*

12 (A) *the item is essential to the national se-*
 13 *curity of the United States; and*

14 (B) *such person is a sole source supplier of*
 15 *the item, the item is not available from any al-*
 16 *ternative reliable supplier, and the need for the*
 17 *item cannot be met in a timely manner by im-*
 18 *proved manufacturing processes or technological*
 19 *developments.*

20 (b) *TRANSFERS OF MISSILE EQUIPMENT OR TECH-*
 21 *NOLOGY BY FOREIGN PERSONS.*—

22 (1) *SANCTIONS.*—

23 (A) *IN GENERAL.*—*Subject to paragraphs*

24 (3) *through (7), if the President determines that*

1 *a foreign person, after the date of enactment of*
2 *this section, knowingly—*

3 *(i) exports, transfers, or otherwise en-*
4 *gages in the trade of any MTCR equipment*
5 *or technology that contributes to the design,*
6 *development, or production of missiles in a*
7 *country that is not an MTCR adherent and*
8 *would be, if it were United States-origin*
9 *equipment or technology, subject to the ju-*
10 *risdiction of the United States under this*
11 *Act,*

12 *(ii) conspires to or attempts to engage*
13 *in such export, transfer, or trade, or*

14 *(iii) facilitates such export, transfer, or*
15 *trade by any other person,*

16 *or if the President has made a determination*
17 *with respect to a foreign person under section*
18 *73(a) of the Arms Export Control Act, then the*
19 *President shall impose on that foreign person the*
20 *applicable sanctions under subparagraph (B).*

21 *(B) SANCTIONS DESCRIBED.—The sanctions*
22 *which apply to a foreign person under subpara-*
23 *graph (A) are the following:*

24 *(i) If the item involved in the export,*
25 *transfer, or trade is within category II of*

1 *the MTCR Annex, then the President shall*
2 *deny, for a period of 2 years, licenses for the*
3 *transfer to such foreign person of missile*
4 *equipment or technology the export of which*
5 *is controlled under this Act.*

6 *(ii) If the item involved in the export,*
7 *transfer, or trade is within category I of the*
8 *MTCR Annex, then the President shall*
9 *deny, for a period of not less than 2 years,*
10 *licenses for the transfer to such foreign per-*
11 *son of items the export of which is con-*
12 *trolled under this Act.*

13 *(iii) If, in addition to actions taken*
14 *under clauses (i) and (ii), the President de-*
15 *termines that the export, transfer, or trade*
16 *has substantially contributed to the design,*
17 *development, or production of missiles in a*
18 *country that is not an MTCR adherent,*
19 *then the President shall prohibit, for a pe-*
20 *riod of not less than 2 years, the importa-*
21 *tion into the United States of products pro-*
22 *duced by that foreign person.*

23 (2) *INAPPLICABILITY WITH RESPECT TO MTCR*
24 *ADHERENTS.—Paragraph (1) does not apply with re-*
25 *spect to—*

1 (A) any export, transfer, or trading activity
 2 that is authorized by the laws of an MTCR ad-
 3 herent, if such authorization is not obtained by
 4 misrepresentation or fraud; or

5 (B) any export, transfer, or trade of an
 6 item to an end user in a country that is an
 7 MTCR adherent.

8 (3) *EFFECT OF ENFORCEMENT ACTIONS BY MTCR*
 9 *ADHERENTS.*—Sanctions set forth in paragraph (1)
 10 may not be imposed under this subsection on a person
 11 with respect to acts described in such paragraph or,
 12 if such sanctions are in effect against a person on ac-
 13 count of such acts, such sanctions shall be terminated,
 14 if an MTCR adherent is taking judicial or other en-
 15 forcement action against that person with respect to
 16 such acts, or that person has been found by the gov-
 17 ernment of an MTCR adherent to be innocent of
 18 wrongdoing with respect to such acts.

19 (4) *ADVISORY OPINIONS.*—The Secretary, in con-
 20 sultation with the Secretary of State and the Sec-
 21 retary of Defense, may, upon the request of any per-
 22 son, issue an advisory opinion to that person as to
 23 whether a proposed activity by that person would sub-
 24 ject that person to sanctions under this subsection.
 25 Any person who relies in good faith on such an advi-

1 *sory opinion which states that the proposed activity*
 2 *would not subject a person to such sanctions, and any*
 3 *person who thereafter engages in such activity, may*
 4 *not be made subject to such sanctions on account of*
 5 *such activity.*

6 (5) *WAIVER AND REPORT TO CONGRESS.—*

7 (A) *WAIVER.—In any case other than one*
 8 *in which an advisory opinion has been issued*
 9 *under paragraph (4) stating that a proposed ac-*
 10 *tivity would not subject a person to sanctions*
 11 *under this subsection, the President may waive*
 12 *the application of paragraph (1) to a foreign*
 13 *person if the President determines that such*
 14 *waiver is essential to the national security of the*
 15 *United States.*

16 (B) *REPORT TO CONGRESS.—In the event*
 17 *that the President decides to apply the waiver*
 18 *described in subparagraph (A), the President*
 19 *shall so notify Congress not less than 20 working*
 20 *days before issuing the waiver. Such notification*
 21 *shall include a report fully articulating the ra-*
 22 *tionale and circumstances which led the Presi-*
 23 *dent to apply the waiver.*

24 (6) *ADDITIONAL WAIVER.—The President may*
 25 *wave the imposition of sanctions under paragraph*

1 (1) *on a person with respect to a product or service*
2 *if the President certifies to the Congress that—*

3 (A) *the product or service is essential to the*
4 *national security of the United States; and*

5 (B) *such person is a sole source supplier of*
6 *the product or service, the product or service is*
7 *not available from any alternative reliable sup-*
8 *plier, and the need for the product or service*
9 *cannot be met in a timely manner by improved*
10 *manufacturing processes or technological develop-*
11 *ments.*

12 (7) *EXCEPTIONS.—The President shall not apply*
13 *the sanction under this subsection prohibiting the im-*
14 *portation of the products of a foreign person—*

15 (A) *in the case of procurement of defense ar-*
16 *ticles or defense services—*

17 (i) *under existing contracts or sub-*
18 *contracts, including the exercise of options*
19 *for production quantities to satisfy require-*
20 *ments essential to the national security of*
21 *the United States;*

22 (ii) *if the President determines that the*
23 *person to which the sanctions would be ap-*
24 *plied is a sole source supplier of the defense*
25 *articles and services, that the defense arti-*

1 *cles or services are essential to the national*
2 *security of the United States, and that al-*
3 *ternative sources are not readily or reason-*
4 *ably available; or*

5 *(iii) if the President determines that*
6 *such articles or services are essential to the*
7 *national security of the United States under*
8 *defense coproduction agreements or NATO*
9 *Programs of Cooperation;*

10 *(B) to products or services provided under*
11 *contracts entered into before the date on which*
12 *the President publishes his intention to impose*
13 *the sanctions; or*

14 *(C) to—*

15 *(i) spare parts,*

16 *(ii) component parts, but not finished*
17 *products, essential to United States prod-*
18 *ucts or production,*

19 *(iii) routine services and maintenance*
20 *of products, to the extent that alternative*
21 *sources are not readily or reasonably avail-*
22 *able, or*

23 *(iv) information and technology essen-*
24 *tial to United States products or produc-*
25 *tion.*

1 (c) *DEFINITIONS.*—*In this section:*

2 (1) *MISSILE.*—*The term “missile” means a cat-*
 3 *egory I system as defined in the MTCR Annex, and*
 4 *any other unmanned delivery system of similar capa-*
 5 *bility, as well as the specially designed production fa-*
 6 *cilities for these systems.*

7 (2) *MISSILE TECHNOLOGY CONTROL REGIME;*
 8 *MTCR.*—*The term “Missile Technology Control Re-*
 9 *gime” or “MTCR” means the policy statement, be-*
 10 *tween the United States, the United Kingdom, the*
 11 *Federal Republic of Germany, France, Italy, Canada,*
 12 *and Japan, announced on April 16, 1987, to restrict*
 13 *sensitive missile-relevant transfers based on the*
 14 *MTCR Annex, and any amendments thereto.*

15 (3) *MTCR ADHERENT.*—*The term “MTCR ad-*
 16 *herent” means a country that participates in the*
 17 *MTCR or that, pursuant to an international under-*
 18 *standing to which the United States is a party, con-*
 19 *trols MTCR equipment or technology in accordance*
 20 *with the criteria and standards set forth in the*
 21 *MTCR.*

22 (4) *MTCR ANNEX.*—*The term “MTCR Annex”*
 23 *means the Guidelines and Equipment and Technology*
 24 *Annex of the MTCR, and any amendments thereto.*

1 (5) *MISSILE EQUIPMENT OR TECHNOLOGY; MTCR*
 2 *EQUIPMENT OR TECHNOLOGY.*—*The terms “missile*
 3 *equipment or technology” and “MTCR equipment or*
 4 *technology” mean those items listed in category I or*
 5 *category II of the MTCR Annex.*

6 (6) *FOREIGN PERSON.*—*The term “foreign per-*
 7 *son” means any person other than a United States*
 8 *person.*

9 (7) *PERSON.*—

10 (A) *IN GENERAL.*—*The term “person”*
 11 *means a natural person as well as a corporation,*
 12 *business association, partnership, society, trust,*
 13 *any other nongovernmental entity, organization,*
 14 *or group, and any governmental entity operating*
 15 *as a business enterprise, and any successor of*
 16 *any such entity.*

17 (B) *IDENTIFICATION IN CERTAIN CASES.*—
 18 *In the case of countries where it may be impos-*
 19 *sible to identify a specific governmental entity*
 20 *referred to in subparagraph (A), the term “per-*
 21 *son” means—*

22 (i) *all activities of that government re-*
 23 *lating to the development or production of*
 24 *any missile equipment or technology; and*

1 (ii) all activities of that government
 2 affecting the development or production of
 3 aircraft, electronics, and space systems or
 4 equipment.

5 (8) *OTHERWISE ENGAGED IN THE TRADE OF.*—

6 The term “otherwise engaged in the trade of” means,
 7 with respect to a particular export or transfer, to be
 8 a freight forwarder or designated exporting agent, or
 9 a consignee or end user of the item to be exported or
 10 transferred.

11 **SEC. 505. CHEMICAL AND BIOLOGICAL WEAPONS PRO-**
 12 **LIFERATION SANCTIONS.**

13 (a) *IMPOSITION OF SANCTIONS.*—

14 (1) *DETERMINATION BY THE PRESIDENT.*—*Ex-*
 15 cept as provided in subsection (b)(2), the President
 16 shall impose both of the sanctions described in sub-
 17 section (c) if the President determines that a foreign
 18 person, on or after the date of enactment of this sec-
 19 tion, has knowingly and materially contributed—

20 (A) through the export from the United
 21 States of any item that is subject to the jurisdic-
 22 tion of the United States under this Act, or

23 (B) through the export from any other coun-
 24 try of any item that would be, if it were a

1 *United States item, subject to the jurisdiction of*
2 *the United States under this Act,*
3 *to the efforts by any foreign country, project, or entity*
4 *described in paragraph (2) to use, develop, produce,*
5 *stockpile, or otherwise acquire chemical or biological*
6 *weapons.*

7 (2) *COUNTRIES, PROJECTS, OR ENTITIES RECEIV-*
8 *ING ASSISTANCE.—Paragraph (1) applies in the case*
9 *of—*

10 (A) *any foreign country that the President*
11 *determines has, at any time after the date of en-*
12 *actment of this Act—*

13 (i) *used chemical or biological weapons*
14 *in violation of international law;*

15 (ii) *used lethal chemical or biological*
16 *weapons against its own nationals; or*

17 (iii) *made substantial preparations to*
18 *engage in the activities described in clause*
19 *(i) or (ii);*

20 (B) *any foreign country whose government*
21 *is determined for purposes of section 310 to be*
22 *a government that has repeatedly provided sup-*
23 *port for acts of international terrorism; or*

1 (C) any other foreign country, project, or
 2 entity designated by the President for purposes
 3 of this section.

4 (3) *PERSONS AGAINST WHICH SANCTIONS ARE TO*
 5 *BE IMPOSED.*—Sanctions shall be imposed pursuant
 6 to paragraph (1) on—

7 (A) the foreign person with respect to which
 8 the President makes the determination described
 9 in that paragraph;

10 (B) any successor entity to that foreign per-
 11 son;

12 (C) any foreign person that is a parent or
 13 subsidiary of that foreign person if that parent
 14 or subsidiary knowingly assisted in the activities
 15 which were the basis of that determination; and

16 (D) any foreign person that is an affiliate
 17 of that foreign person if that affiliate knowingly
 18 assisted in the activities which were the basis of
 19 that determination and if that affiliate is con-
 20 trolled in fact by that foreign person.

21 (b) *CONSULTATIONS WITH AND ACTIONS BY FOREIGN*
 22 *GOVERNMENT OF JURISDICTION.*—

23 (1) *CONSULTATIONS.*—If the President makes the
 24 determinations described in subsection (a)(1) with re-
 25 spect to a foreign person, Congress urges the President

1 to initiate consultations immediately with the govern-
2 ment with primary jurisdiction over that foreign per-
3 son with respect to the imposition of sanctions pursu-
4 ant to this section.

5 (2) *ACTIONS BY GOVERNMENT OF JURISDIC-*
6 *TION.*—In order to pursue such consultations with
7 that government, the President may delay imposition
8 of sanctions pursuant to this section for a period of
9 up to 90 days. Following the consultations, the Presi-
10 dent shall impose sanctions unless the President deter-
11 mines and certifies to Congress that government has
12 taken specific and effective actions, including appro-
13 priate penalties, to terminate the involvement of the
14 foreign person in the activities described in subsection
15 (a)(1). The President may delay imposition of sanc-
16 tions for an additional period of up to 90 days if the
17 President determines and certifies to Congress that
18 government is in the process of taking the actions de-
19 scribed in the preceding sentence.

20 (3) *REPORT TO CONGRESS.*—The President shall
21 report to Congress, not later than 90 days after mak-
22 ing a determination under subsection (a)(1), on the
23 status of consultations with the appropriate govern-
24 ment under this subsection, and the basis for any de-
25 termination under paragraph (2) of this subsection

1 *that such government has taken specific corrective ac-*
 2 *tions.*

3 (c) *SANCTIONS.—*

4 (1) *DESCRIPTION OF SANCTIONS.—The sanctions*
 5 *to be imposed pursuant to subsection (a)(1) are, ex-*
 6 *cept as provided in paragraph (2) of this subsection,*
 7 *the following:*

8 (A) *PROCUREMENT SANCTION.—The United*
 9 *States Government shall not procure, or enter*
 10 *into any contract for the procurement of, any*
 11 *goods or services from any person described in*
 12 *subsection (a)(3).*

13 (B) *IMPORT SANCTIONS.—The importation*
 14 *into the United States of products produced by*
 15 *any person described in subsection (a)(3) shall be*
 16 *prohibited.*

17 (2) *EXCEPTIONS.—The President shall not be re-*
 18 *quired to apply or maintain sanctions under this*
 19 *section—*

20 (A) *in the case of procurement of defense ar-*
 21 *ticles or defense services—*

22 (i) *under existing contracts or sub-*
 23 *contracts, including the exercise of options*
 24 *for production quantities to satisfy United*
 25 *States operational military requirements;*

1 (ii) if the President determines that the
2 person or other entity to which the sanc-
3 tions would otherwise be applied is a sole
4 source supplier of the defense articles or
5 services, that the defense articles or services
6 are essential, and that alternative sources
7 are not readily or reasonably available; or

8 (iii) if the President determines that
9 such articles or services are essential to the
10 national security under defense coproduc-
11 tion agreements;

12 (B) to products or services provided under
13 contracts entered into before the date on which
14 the President publishes his intention to impose
15 sanctions;

16 (C) to—

17 (i) spare parts,

18 (ii) component parts, but not finished
19 products, essential to United States prod-
20 ucts or production, or

21 (iii) routine servicing and mainte-
22 nance of products, to the extent that alter-
23 native sources are not readily or reasonably
24 available;

1 (D) to information and technology essential
2 to United States products or production; or

3 (E) to medical or other humanitarian
4 items.

5 (d) *TERMINATION OF SANCTIONS.*—The sanctions im-
6 posed pursuant to this section shall apply for a period of
7 at least 12 months following the imposition of sanctions and
8 shall cease to apply thereafter only if the President deter-
9 mines and certifies to the Congress that reliable information
10 indicates that the foreign person with respect to which the
11 determination was made under subsection (a)(1) has ceased
12 to aid or abet any foreign government, project, or entity
13 in its efforts to acquire chemical or biological weapons ca-
14 pability as described in that subsection.

15 (e) *WAIVER.*—

16 (1) *CRITERION FOR WAIVER.*—The President
17 may waive the application of any sanction imposed
18 on any person pursuant to this section, after the end
19 of the 12-month period beginning on the date on
20 which that sanction was imposed on that person, if
21 the President determines and certifies to Congress
22 that such waiver is important to the national security
23 interests of the United States.

24 (2) *NOTIFICATION OF AND REPORT TO CON-*
25 *GRESS.*—If the President decides to exercise the waiv-

1 *er authority provided in paragraph (1), the President*
 2 *shall so notify the Congress not less than 20 days be-*
 3 *fore the waiver takes effect. Such notification shall in-*
 4 *clude a report fully articulating the rationale and*
 5 *circumstances which led the President to exercise the*
 6 *waiver authority.*

7 *(f) DEFINITION OF FOREIGN PERSON.—For the pur-*
 8 *poses of this section, the term “foreign person” means—*

9 *(1) an individual who is not a citizen of the*
 10 *United States or an alien admitted for permanent*
 11 *residence to the United States; or*

12 *(2) a corporation, partnership, or other entity*
 13 *which is created or organized under the laws of a for-*
 14 *foreign country or which has its principal place of busi-*
 15 *ness outside the United States.*

16 **SEC. 506. ENFORCEMENT.**

17 *(a) GENERAL AUTHORITY AND DESIGNATION.—*

18 *(1) POLICY GUIDANCE ON ENFORCEMENT.—The*
 19 *Secretary, in consultation with the Secretary of the*
 20 *Treasury and the heads of other departments and*
 21 *agencies that the Secretary considers appropriate,*
 22 *shall be responsible for providing policy guidance on*
 23 *the enforcement of this Act.*

24 *(2) GENERAL AUTHORITIES.—*

1 (A) *EXERCISE OF AUTHORITY.*—*To the ex-*
2 *tent necessary or appropriate to the enforcement*
3 *of this Act, officers and employees of the Depart-*
4 *ment designated by the Secretary, officers and*
5 *employees of the United States Customs Service*
6 *designated by the Commissioner of Customs, and*
7 *officers and employees of any other department*
8 *or agency designated by the head of a depart-*
9 *ment or agency exercising functions under this*
10 *Act, may exercise the enforcement authority*
11 *under paragraph (3).*

12 (B) *CUSTOMS SERVICE.*—*In carrying out*
13 *enforcement authority under paragraph (3), the*
14 *Commissioner of Customs and employees of the*
15 *United States Customs Service designated by the*
16 *Commissioner may make investigations within*
17 *or outside the United States and at ports of*
18 *entry into or exit from the United States where*
19 *officers of the United States Customs Service are*
20 *authorized by law to carry out law enforcement*
21 *responsibilities. Subject to paragraph (3), the*
22 *United States Customs Service is authorized, in*
23 *the enforcement of this Act, to search, detain*
24 *(after search), and seize items at the ports of*
25 *entry into or exit from the United States where*

1 *officers of the United States Customs Service are*
2 *authorized by law to conduct searches, deten-*
3 *tions, and seizures, and at the places outside the*
4 *United States where the United States Customs*
5 *Service, pursuant to agreement or other arrange-*
6 *ment with other countries, is authorized to per-*
7 *form enforcement activities.*

8 (C) *OTHER EMPLOYEES.—In carrying out*
9 *enforcement authority under paragraph (3), the*
10 *Secretary and officers and employees of the De-*
11 *partment designated by the Secretary may make*
12 *investigations within the United States, and*
13 *may conduct, outside the United States, pre-li-*
14 *cense and post-shipment verifications of con-*
15 *trolled items and investigations in the enforce-*
16 *ment of section 502. The Secretary and officers*
17 *and employees of the Department designated by*
18 *the Secretary are authorized to search, detain*
19 *(after search), and seize items at places within*
20 *the United States other than ports referred to in*
21 *subparagraph (B). The search, detention (after*
22 *search), or seizure of items at the ports and*
23 *places referred to in subparagraph (B) may be*
24 *conducted by officers and employees of the De-*
25 *partment only with the concurrence of the Com-*

1 *missioner of Customs or a person designated by*
 2 *the Commissioner.*

3 *(D) AGREEMENTS AND ARRANGEMENTS.—*

4 *The Secretary and the Commissioner of Customs*
 5 *may enter into agreements and arrangements for*
 6 *the enforcement of this Act, including foreign in-*
 7 *vestigations and information exchange.*

8 *(3) SPECIFIC AUTHORITIES.—*

9 *(A) ACTIONS BY ANY DESIGNATED PER-*
 10 *SONNEL.—Any officer or employee designated*
 11 *under paragraph (2), in carrying out the en-*
 12 *forcement authority under this Act, may do the*
 13 *following:*

14 *(i) Make investigations of, obtain in-*
 15 *formation from, make inspection of any*
 16 *books, records, or reports (including any*
 17 *writings required to be kept by the Sec-*
 18 *retary), premises, or property of, and take*
 19 *the sworn testimony of, any person.*

20 *(ii) Administer oaths or affirmations,*
 21 *and by subpoena require any person to ap-*
 22 *pear and testify or to appear and produce*
 23 *books, records, and other writings, or both.*
 24 *In the case of contumacy by, or refusal to*
 25 *obey a subpoena issued to, any such person,*

1 *a district court of the United States, on re-*
2 *quest of the Attorney General and after no-*
3 *tice to any such person and a hearing, shall*
4 *have jurisdiction to issue an order requiring*
5 *such person to appear and give testimony*
6 *or to appear and produce books, records,*
7 *and other writings, or both. Any failure to*
8 *obey such order of the court may be pun-*
9 *ished by such court as a contempt thereof.*
10 *The attendance of witnesses and the produc-*
11 *tion of documents provided for in this*
12 *clause may be required from any State, the*
13 *District of Columbia, or in any territory of*
14 *the United States at any designated place.*
15 *Witnesses subpoenaed under this subsection*
16 *shall be paid the same fees and mileage al-*
17 *lowance as paid witnesses in the district*
18 *courts of the United States.*

19 *(B) ACTIONS BY OFFICE OF EXPORT EN-*
20 *FORCEMENT AND CUSTOMS SERVICE PER-*
21 *SONNEL.—*

22 *(i) OFFICE OF EXPORT ENFORCEMENT*
23 *AND CUSTOMS SERVICE PERSONNEL.—Any*
24 *officer or employee of the Office of Export*
25 *Enforcement of the Department of Com-*

1 *merce (in this Act referred to as “OEE”)*
2 *who is designated by the Secretary under*
3 *paragraph (2), and any officer or employee*
4 *of the United States Customs Service who is*
5 *designated by the Commissioner of Customs*
6 *under paragraph (2), may do the following*
7 *in carrying out the enforcement authority*
8 *under this Act:*

9 *(I) Execute any warrant or other*
10 *process issued by a court or officer of*
11 *competent jurisdiction with respect to*
12 *the enforcement of this Act.*

13 *(II) Make arrests without warrant*
14 *for any violation of this Act committed*
15 *in his or her presence or view, or if the*
16 *officer or employee has probable cause*
17 *to believe that the person to be arrested*
18 *has committed, is committing, or is*
19 *about to commit such a violation.*

20 *(III) Carry firearms.*

21 *(ii) OEE PERSONNEL.—Any officer or*
22 *employee of the OEE designated by the Sec-*
23 *retary under paragraph (2) shall exercise*
24 *the authority set forth in clause (i) pursu-*

1 *ant to guidelines approved by the Attorney*
2 *General.*

3 (C) *OTHER ACTIONS BY CUSTOMS SERVICE*
4 *PERSONNEL.—Any officer or employee of the*
5 *United States Customs Service designated by the*
6 *Commissioner of Customs under paragraph (2)*
7 *may do the following in carrying out the enforce-*
8 *ment authority under this Act:*

9 (i) *Stop, search, and examine a vehi-*
10 *cle, vessel, aircraft, or person on which or*
11 *whom the officer or employee has reasonable*
12 *cause to suspect there is any item that has*
13 *been, is being, or is about to be exported*
14 *from or transited through the United States*
15 *in violation of this Act.*

16 (ii) *Detain and search any package or*
17 *container in which the officer or employee*
18 *has reasonable cause to suspect there is any*
19 *item that has been, is being, or is about to*
20 *be exported from or transited through the*
21 *United States in violation of this Act.*

22 (iii) *Detain (after search) or seize any*
23 *item, for purposes of securing for trial or*
24 *forfeiture to the United States, on or about*
25 *such vehicle, vessel, aircraft, or person or in*

1 *such package or container, if the officer or*
 2 *employee has probable cause to believe the*
 3 *item has been, is being, or is about to be ex-*
 4 *ported from or transited through the United*
 5 *States in violation of this Act.*

6 (4) *OTHER AUTHORITIES NOT AFFECTED.—The*
 7 *authorities conferred by this section are in addition*
 8 *to any authorities conferred under other laws.*

9 (b) *FORFEITURE.—*

10 (1) *IN GENERAL.—Any tangible items lawfully*
 11 *seized under subsection (a) by designated officers or*
 12 *employees shall be subject to forfeiture to the United*
 13 *States.*

14 (2) *APPLICABLE LAWS.—Those provisions of law*
 15 *relating to—*

16 (A) *the seizure, summary and judicial for-*
 17 *feiture, and condemnation of property for viola-*
 18 *tions of the customs laws;*

19 (B) *the disposition of such property or the*
 20 *proceeds from the sale thereof;*

21 (C) *the remission or mitigation of such for-*
 22 *feitures; and*

23 (D) *the compromise of claims,*

24 *shall apply to seizures and forfeitures incurred, or al-*
 25 *leged to have been incurred, under the provisions of*

1 *this subsection, insofar as applicable and not incon-*
2 *sistent with this Act.*

3 (3) *FORFEITURES UNDER CUSTOMS LAWS.—Du-*
4 *ties that are imposed upon a customs officer or any*
5 *other person with respect to the seizure and forfeiture*
6 *of property under the customs laws may be performed*
7 *with respect to seizures and forfeitures of property*
8 *under this subsection by the Secretary or any officer*
9 *or employee of the Department that may be author-*
10 *ized or designated for that purpose by the Secretary*
11 *(or by the Commissioner of Customs or any officer or*
12 *employee of the United States Customs Service des-*
13 *ignated by the Commissioner), or, upon the request of*
14 *the Secretary, by any other agency that has authority*
15 *to manage and dispose of seized property.*

16 (c) *REFERRAL OF CASES.—All cases involving viola-*
17 *tions of this Act shall be referred to the Secretary for pur-*
18 *poses of determining civil penalties and administrative*
19 *sanctions under section 503 or to the Attorney General for*
20 *criminal action in accordance with this Act or to both the*
21 *Secretary and the Attorney General.*

22 (d) *UNDERCOVER INVESTIGATION OPERATIONS.—*

23 (1) *USE OF FUNDS.—With respect to any under-*
24 *cover investigative operation conducted by the OEE*

1 *that is necessary for the detection and prosecution of*
2 *violations of this Act—*

3 *(A) funds made available for export enforce-*
4 *ment under this Act may be used to purchase*
5 *property, buildings, and other facilities, and to*
6 *lease equipment, conveyances, and space within*
7 *the United States, without regard to sections*
8 *1341 and 3324 of title 31, United States Code,*
9 *the third undesignated paragraph under the*
10 *heading of “miscellaneous” of the Act of March*
11 *3, 1877, (40 U.S.C. 34), sections 3732(a) and*
12 *3741 of the Revised Statutes of the United States*
13 *(41 U.S.C. 11(a) and 22), subsections (a) and (c)*
14 *of section 304 of the Federal Property and Ad-*
15 *ministrative Services Act of 1949 (41 U.S.C. 254*
16 *(a) and (c)), and section 305 of the Federal*
17 *Property and Administrative Services Act of*
18 *1949 (41 U.S.C. 255);*

19 *(B) funds made available for export enforce-*
20 *ment under this Act may be used to establish or*
21 *to acquire proprietary corporations or business*
22 *entities as part of an undercover operation, and*
23 *to operate such corporations or business entities*
24 *on a commercial basis, without regard to sections*

1 1341, 3324, and 9102 of title 31, United States
2 Code;

3 (C) funds made available for export enforce-
4 ment under this Act and the proceeds from un-
5 dercover operations may be deposited in banks or
6 other financial institutions without regard to the
7 provisions of section 648 of title 18, United
8 States Code, and section 3302 of title 31, United
9 States Code; and

10 (D) the proceeds from undercover operations
11 may be used to offset necessary and reasonable
12 expenses incurred in such operations without re-
13 gard to the provisions of section 3302 of title 31,
14 United States Code,

15 if the Director of OEE (or an officer or employee des-
16 ignated by the Director) certifies, in writing, that the
17 action authorized by subparagraph (A), (B), (C), or
18 (D) for which the funds would be used is necessary for
19 the conduct of the undercover operation.

20 (2) DISPOSITION OF BUSINESS ENTITIES.—If a
21 corporation or business entity established or acquired
22 as part of an undercover operation has a net value
23 of more than \$250,000 and is to be liquidated, sold,
24 or otherwise disposed of, the Director of OEE shall re-
25 port the circumstances to the Secretary and the

1 *Comptroller General of the United States as much in*
2 *advance of such disposition as the Director of the*
3 *OEE (or the Director's designee) determines is prac-*
4 *ticable. The proceeds of the liquidation, sale, or other*
5 *disposition, after obligations incurred by the corpora-*
6 *tion or business enterprise are met, shall be deposited*
7 *in the Treasury of the United States as miscellaneous*
8 *receipts. Any property or equipment purchased pur-*
9 *suant to paragraph (1) may be retained for subse-*
10 *quent use in undercover operations under this section.*
11 *When such property or equipment is no longer needed,*
12 *it shall be considered surplus and disposed of as sur-*
13 *plus government property.*

14 (3) *DEPOSIT OF PROCEEDS.—As soon as the pro-*
15 *ceeds from an OEE undercover investigative oper-*
16 *ation with respect to which an action is authorized*
17 *and carried out under this subsection are no longer*
18 *needed for the conduct of such operation, the proceeds*
19 *or the balance of the proceeds remaining at the time*
20 *shall be deposited into the Treasury of the United*
21 *States as miscellaneous receipts.*

22 (4) *AUDIT AND REPORT.—*

23 (A) *AUDIT.—The Director of OEE shall*
24 *conduct a detailed financial audit of each closed*
25 *OEE undercover investigative operation and*

1 *shall submit the results of the audit in writing*
2 *to the Secretary. Not later than 180 days after*
3 *an undercover operation is closed, the Secretary*
4 *shall submit to Congress a report on the results*
5 *of the audit.*

6 *(B) REPORT.—The Secretary shall submit*
7 *annually to Congress a report, which may be in-*
8 *cluded in the annual report under section 701,*
9 *specifying the following information:*

10 *(i) The number of undercover inves-*
11 *tigative operations pending as of the end of*
12 *the period for which such report is sub-*
13 *mitted.*

14 *(ii) The number of undercover inves-*
15 *tigative operations commenced in the 1-year*
16 *period preceding the period for which such*
17 *report is submitted.*

18 *(iii) The number of undercover inves-*
19 *tigative operations closed in the 1-year pe-*
20 *riod preceding the period for which such re-*
21 *port is submitted and, with respect to each*
22 *such closed undercover operation, the results*
23 *obtained and any civil claims made with*
24 *respect to the operation.*

1 (5) *DEFINITIONS.*—For purposes of paragraph
2 (4)—

3 (A) the term “closed”, with respect to an
4 undercover investigative operation, refers to the
5 earliest point in time at which all criminal pro-
6 ceedings (other than appeals) pursuant to the in-
7 vestigative operation are concluded, or covert ac-
8 tivities pursuant to such operation are con-
9 cluded, whichever occurs later; and

10 (B) the terms “undercover investigative op-
11 eration” and “undercover operation” mean any
12 undercover investigative operation conducted by
13 the OEE—

14 (i) in which the gross receipts (exclud-
15 ing interest earned) exceed \$25,000, or ex-
16 penditures (other than expenditures for sal-
17 aries of employees) exceed \$75,000, and

18 (ii) which is exempt from section 3302
19 or 9102 of title 31, United States Code, ex-
20 cept that clauses (i) and (ii) shall not apply
21 with respect to the report to Congress re-
22 quired by paragraph (4)(B).

23 (e) *WIRETAPS.*—

24 (1) *AUTHORITY.*—Interceptions of communica-
25 tions in accordance with section 2516 of title 18,

1 *United States Code, are authorized to further the en-*
 2 *forcement of this Act.*

3 (2) *CONFORMING AMENDMENT.*—*Section 2516(1)*
 4 *of title 18, United States Code, is amended by adding*
 5 *at the end the following:*

6 “(q)(i) *any violation of, or conspiracy to*
 7 *violate, the Export Administration Act of 2001*
 8 *or the Export Administration Act of 1979.”.*

9 (f) *POST-SHIPMENT VERIFICATION.*—*The Secretary*
 10 *shall target post-shipment verifications to exports involving*
 11 *the greatest risk to national security.*

12 (g) *REFUSAL TO ALLOW POST-SHIPMENT*
 13 *VERIFICATION.*—

14 (1) *IN GENERAL.*—*If an end-user refuses to allow*
 15 *post-shipment verification of a controlled item, the*
 16 *Secretary shall deny a license for the export of any*
 17 *controlled item to such end-user until such post-ship-*
 18 *ment verification occurs.*

19 (2) *RELATED PERSONS.*—*The Secretary may ex-*
 20 *ercise the authority under paragraph (1) with respect*
 21 *to any person related through affiliation, ownership,*
 22 *control, or position of responsibility, to any end-user*
 23 *refusing to allow post-shipment verification of a con-*
 24 *trolled item.*

1 (3) *REFUSAL BY COUNTRY.*—*If the country in*
 2 *which the end-user is located refuses to allow post-*
 3 *shipment verification of a controlled item, the Sec-*
 4 *retary may deny a license for the export of that item*
 5 *or any substantially identical or directly competitive*
 6 *item or class of items to all end-users in that country*
 7 *until such post-shipment verification is allowed.*

8 (h) *FREIGHT FORWARDERS BEST PRACTICES PRO-*
 9 *GRAM AUTHORIZATION.*—*There is authorized to be appro-*
 10 *priated for the Department of Commerce \$3,500,000 and*
 11 *such sums as may be necessary to hire 20 additional em-*
 12 *ployees to assist United States freight forwarders and other*
 13 *interested parties in developing and implementing, on a*
 14 *voluntary basis, a “best practices” program to ensure that*
 15 *exports of controlled items are undertaken in compliance*
 16 *with this Act.*

17 (i) *END-USE VERIFICATION AUTHORIZATION.*—

18 (1) *IN GENERAL.*—*There is authorized to be ap-*
 19 *propriated for the Department of Commerce*
 20 *\$4,500,000 and such sums as may be necessary to*
 21 *hire 10 additional overseas investigators to be posted*
 22 *in the People’s Republic of China, the Russian Fed-*
 23 *eration, the Hong Kong Special Administrative Re-*
 24 *gion, the Republic of India, Singapore, Egypt, and*
 25 *Taiwan, or any other place the Secretary deems ap-*

1 *appropriate, for the purpose of verifying the end use of*
2 *high-risk, dual-use technology.*

3 (2) *REPORT.*—*Not later than 2 years after the*
4 *date of enactment of this Act and annually thereafter,*
5 *the Department shall, in its annual report to Con-*
6 *gress on export controls, include a report on the effec-*
7 *tiveness of the end-use verification activities author-*
8 *ized under subsection (a). The report shall include the*
9 *following information:*

10 (A) *The activities of the overseas investiga-*
11 *tors of the Department.*

12 (B) *The types of goods and technologies that*
13 *were subject to end-use verification.*

14 (C) *The ability of the Department's inves-*
15 *tigators to detect the illegal transfer of high risk,*
16 *dual-use goods and technologies.*

17 (3) *ENHANCEMENTS.*—*In addition to the author-*
18 *ization provided in paragraph (1), there is authorized*
19 *to be appropriated for the Department of Commerce*
20 *\$5,000,000 to enhance its program for verifying the*
21 *end use of items subject to controls under this Act.*

22 (j) *ENHANCED COOPERATION WITH UNITED STATES*
23 *CUSTOMS SERVICE.*—*Consistent with the purposes of this*
24 *Act, the Secretary is authorized to undertake, in coopera-*
25 *tion with the United States Customs Service, such measures*

1 *as may be necessary or required to enhance the ability of*
2 *the United States to detect unlawful exports and to enforce*
3 *violations of this Act.*

4 *(k) REFERENCE TO ENFORCEMENT.—For purposes of*
5 *this section, a reference to the enforcement of this Act or*
6 *to a violation of this Act includes a reference to the enforce-*
7 *ment or a violation of any regulation, license, or order*
8 *issued under this Act.*

9 *(l) AUTHORIZATION FOR EXPORT LICENSING AND EN-*
10 *FORCEMENT COMPUTER SYSTEM.—There is authorized to*
11 *be appropriated for the Department \$5,000,000 and such*
12 *other sums as may be necessary for planning, design, and*
13 *procurement of a computer system to replace the Depart-*
14 *ment's primary export licensing and computer enforcement*
15 *system.*

16 *(m) AUTHORIZATION FOR BUREAU OF EXPORT AD-*
17 *MINISTRATION.—The Secretary may authorize, without fis-*
18 *cal year limitation, the expenditure of funds transferred to,*
19 *paid to, received by, or made available to the Bureau of*
20 *Export Administration as a reimbursement in accordance*
21 *with section 9703 of title 31, United States Code (as added*
22 *by Public Law 102–393). The Secretary may also authorize,*
23 *without fiscal year limitation, the expenditure of funds*
24 *transferred to, paid to, received by, or made available to*
25 *the Bureau of Export Administration as a reimbursement*

1 *from the Department of Justice Assets Forfeiture Fund in*
 2 *accordance with section 524 of title 28, United States Code.*
 3 *Such funds shall be deposited in an account and shall re-*
 4 *main available until expended.*

5 (n) *AMENDMENTS TO TITLE 31.—*

6 (1) *Section 9703(a) of title 31, United States*
 7 *Code (as added by Public Law 102–393) is amended*
 8 *by striking “or the United States Coast Guard” and*
 9 *inserting “, the United States Coast Guard, or the*
 10 *Bureau of Export Administration of the Department*
 11 *of Commerce”.*

12 (2) *Section 9703(a)(2)(B)(i) of title 31, United*
 13 *States Code is amended (as added by Public Law*
 14 *102–393)—*

15 (A) *by striking “or” at the end of subclause*
 16 *(I);*

17 (B) *by inserting “or” at the end of sub-*
 18 *clause (II); and*

19 (C) *by inserting at the end, the following*
 20 *new subclause:*

21 “(III) *a violation of the Export*
 22 *Administration Act of 1979, the Ex-*
 23 *port Administration Act of 2001, or*
 24 *any regulation, license, or order issued*
 25 *under those Acts;”.*

1 (3) *Section 9703(p)(1) of title 31, United States*
 2 *Code (as added by Public Law 102–393) is amended*
 3 *by adding at the end the following: “In addition, for*
 4 *purposes of this section, the Bureau of Export Admin-*
 5 *istration of the Department of Commerce shall be con-*
 6 *sidered to be a Department of the Treasury law en-*
 7 *forcement organization.”.*

8 (6) *AUTHORIZATION FOR LICENSE REVIEW OFFI-*
 9 *CERS.—*

10 (1) *IN GENERAL.—There is authorized to be ap-*
 11 *propriated to the Department of Commerce*
 12 *\$2,000,000 to hire additional license review officers.*

13 (2) *TRAINING.—There is authorized to be appro-*
 14 *priated to the Department of Commerce \$2,000,000 to*
 15 *conduct professional training of license review offi-*
 16 *cers, auditors, and investigators conducting post-ship-*
 17 *ment verification checks. These funds shall be used*
 18 *to—*

19 (A) *train and certify, through a formal pro-*
 20 *gram, new employees entering these positions for*
 21 *the first time; and*

22 (B) *the ongoing professional training of ex-*
 23 *perienced employees on an as needed basis.*

24 (p) *AUTHORIZATION.—*

1 (1) *IN GENERAL.*—*There are authorized to be ap-*
2 *propriated to the Department of Commerce to carry*
3 *out the purposes of this Act—*

4 (A) *\$72,000,000 for the fiscal year 2002, of*
5 *which no less than \$27,701,000 shall be used for*
6 *compliance and enforcement activities;*

7 (B) *\$73,000,000 for the fiscal year 2003, of*
8 *which no less than \$28,312,000 shall be used for*
9 *compliance and enforcement activities;*

10 (C) *\$74,000,000 for the fiscal year 2004, of*
11 *which no less than \$28,939,000 shall be used for*
12 *compliance and enforcement activities;*

13 (D) *\$76,000,000 for the fiscal year 2005, of*
14 *which no less than \$29,582,000 shall be used for*
15 *compliance and enforcement activities; and*

16 (E) *such additional amounts, for each such*
17 *fiscal year, as may be necessary for increases in*
18 *salary, pay, retirement, other employee benefits*
19 *authorized by law, and other nondiscretionary*
20 *costs.*

21 (2) *LIMITATION.*—*The authority granted by this*
22 *Act shall terminate on September 30, 2004, unless the*
23 *President carries out the following duties:*

24 (A) *Provides to Congress a detailed report*
25 *on—*

1 (i) the implementation and operation
2 of this Act; and

3 (ii) the operation of United States ex-
4 port controls in general.

5 (B)(i) Provides to Congress legislative re-
6 form proposals in connection with the report de-
7 scribed in subparagraph (A); or

8 (ii) certifies to Congress that no legislative
9 reforms are necessary in connection with such re-
10 port.

11 **SEC. 507. ADMINISTRATIVE PROCEDURE.**

12 (a) *EXEMPTIONS FROM ADMINISTRATIVE PROCE-*
13 *DURE.—Except as provided in this section, the functions*
14 *exercised under this Act are excluded from the operation*
15 *of sections 551, 553 through 559, and 701 through 706 of*
16 *title 5, United States Code.*

17 (b) *PROCEDURES RELATING TO CIVIL PENALTIES AND*
18 *SANCTIONS.—*

19 (1) *ADMINISTRATIVE PROCEDURES.—Any ad-*
20 *ministrative sanction imposed under section 503 may*
21 *be imposed only after notice and opportunity for an*
22 *agency hearing on the record in accordance with sec-*
23 *tions 554 through 557 of title 5, United States Code.*
24 *The imposition of any such administrative sanction*
25 *shall be subject to judicial review in accordance with*

1 sections 701 through 706 of title 5, United States
 2 Code, except that the review shall be initiated in the
 3 United States Court of Appeals for the District of Co-
 4 lumbia Circuit, which shall have jurisdiction of the
 5 review.

6 (2) *AVAILABILITY OF CHARGING LETTER.*—Any
 7 charging letter or other document initiating adminis-
 8 trative proceedings for the imposition of sanctions for
 9 violations of the regulations issued under section 502
 10 shall be made available for public inspection and
 11 copying.

12 (c) *COLLECTION.*—If any person fails to pay a civil
 13 penalty imposed under section 503, the Secretary may ask
 14 the Attorney General to commence a civil action in an ap-
 15 propriate district court of the United States to recover the
 16 amount imposed (plus interest at currently prevailing rates
 17 from the date of the final order). No such action may be
 18 commenced more than 5 years after the order imposing the
 19 civil penalty becomes final. In such an action, the validity,
 20 amount, and appropriateness of such penalty shall not be
 21 subject to review.

22 (d) *IMPOSITION OF TEMPORARY DENIAL ORDERS.*—
 23 (1) *GROUND FOR IMPOSITION.*—In any case in
 24 which there is reasonable cause to believe that a per-
 25 son is engaged in or is about to engage in any act

1 or practice which constitutes or would constitute a
2 violation of this Act, or any regulation, order, or li-
3 cense issued under this Act, including any diversion
4 of goods or technology from an authorized end use or
5 end user, and in any case in which a criminal indict-
6 ment has been returned against a person alleging a
7 violation of this Act or any of the statutes listed in
8 section 503, the Secretary may, without a hearing,
9 issue an order temporarily denying that person's
10 United States export privileges (hereafter in this sub-
11 section referred to as a "temporary denial order"). A
12 temporary denial order shall be effective for such pe-
13 riod (not in excess of 180 days) as the Secretary
14 specifies in the order, but may be renewed by the Sec-
15 retary, following notice and an opportunity for a
16 hearing, for additional periods of not more than 180
17 days each.

18 (2) *ADMINISTRATIVE APPEALS.*—The person or
19 persons subject to the issuance or renewal of a tem-
20 porary denial order may appeal the issuance or re-
21 newal of the temporary denial order, supported by
22 briefs and other material, to an administrative law
23 judge who shall, within 15 working days after the ap-
24 peal is filed, issue a decision affirming, modifying, or

1 *vacating the temporary denial order. The temporary*
2 *denial order shall be affirmed if it is shown that—*

3 *(A) there is reasonable cause to believe that*
4 *the person subject to the order is engaged in or*
5 *is about to engage in any act or practice that*
6 *constitutes or would constitute a violation of this*
7 *Act, or any regulation, order, or license issued*
8 *under this Act; or*

9 *(B) a criminal indictment has been re-*
10 *turned against the person subject to the order al-*
11 *leging a violation of this Act or any of the stat-*
12 *utes listed in section 503.*

13 *The decision of the administrative law judge shall be*
14 *final unless, within 10 working days after the date of*
15 *the administrative law judge's decision, an appeal is*
16 *filed with the Secretary. On appeal, the Secretary*
17 *shall either affirm, modify, reverse, or vacate the deci-*
18 *sion of the administrative law judge by written order*
19 *within 10 working days after receiving the appeal.*
20 *The written order of the Secretary shall be final and*
21 *is not subject to judicial review, except as provided in*
22 *paragraph (3). The materials submitted to the admin-*
23 *istrative law judge and the Secretary shall constitute*
24 *the administrative record for purposes of review by*
25 *the court.*

1 (3) *COURT APPEALS.*—*An order of the Secretary*
2 *affirming, in whole or in part, the issuance or re-*
3 *newal of a temporary denial order may, within 15*
4 *days after the order is issued, be appealed by a person*
5 *subject to the order to the United States Court of Ap-*
6 *peals for the District of Columbia Circuit, which shall*
7 *have jurisdiction of the appeal. The court may review*
8 *only those issues necessary to determine whether the*
9 *issuance of the temporary denial order was based on*
10 *reasonable cause to believe that the person subject to*
11 *the order was engaged in or was about to engage in*
12 *any act or practice that constitutes or would con-*
13 *stitute a violation of this title, or any regulation,*
14 *order, or license issued under this Act, or whether a*
15 *criminal indictment has been returned against the*
16 *person subject to the order alleging a violation of this*
17 *Act or of any of the statutes listed in section 503.*
18 *The court shall vacate the Secretary's order if the*
19 *court finds that the Secretary's order is arbitrary, ca-*
20 *pricious, an abuse of discretion, or otherwise not in*
21 *accordance with law.*

22 *(e) LIMITATIONS ON REVIEW OF CLASSIFIED INFOR-*
23 *MATION.*—*Any classified information that is included in*
24 *the administrative record that is subject to review pursuant*

1 *to subsection (b)(1) or (d)(3) may be reviewed by the court*
 2 *only on an ex parte basis and in camera.*

3 ***TITLE VI—EXPORT CONTROL***
 4 ***AUTHORITY AND REGULATIONS***

5 ***SEC. 601. EXPORT CONTROL AUTHORITY AND REGULA-***
 6 ***TIONS.***

7 *(a) EXPORT CONTROL AUTHORITY.—*

8 *(1) IN GENERAL.—Unless otherwise reserved to*
 9 *the President or a department (other than the Depart-*
 10 *ment) or agency of the United States, all power, au-*
 11 *thority, and discretion conferred by this Act shall be*
 12 *exercised by the Secretary.*

13 *(2) DELEGATION OF FUNCTIONS OF THE SEC-*
 14 *RETARY.—The Secretary may delegate any function*
 15 *under this Act, unless otherwise provided, to the*
 16 *Under Secretary of Commerce for Export Administra-*
 17 *tion or to any other officer of the Department.*

18 *(b) UNDER SECRETARY OF COMMERCE; ASSISTANT*
 19 *SECRETARIES.—*

20 *(1) UNDER SECRETARY OF COMMERCE.—There*
 21 *shall be within the Department an Under Secretary*
 22 *of Commerce for Export Administration (in this sec-*
 23 *tion referred to as the “Under Secretary”) who shall*
 24 *be appointed by the President, by and with the advice*
 25 *and consent of the Senate. The Under Secretary shall*

1 *carry out all functions of the Secretary under this*
 2 *Act and other provisions of law relating to national*
 3 *security, as the Secretary may delegate.*

4 (2) *ADDITIONAL ASSISTANT SECRETARIES.*—*In*
 5 *addition to the number of Assistant Secretaries other-*
 6 *wise authorized for the Department of Commerce,*
 7 *there shall be within the Department of Commerce the*
 8 *following Assistant Secretaries of Commerce:*

9 (A) *An Assistant Secretary for Export Ad-*
 10 *ministration who shall be appointed by the*
 11 *President, by and with the advice and consent of*
 12 *the Senate, and who shall assist the Secretary*
 13 *and the Under Secretary in carrying out func-*
 14 *tions relating to export listing and licensing.*

15 (B) *An Assistant Secretary for Export En-*
 16 *forcement who shall be appointed by the Presi-*
 17 *dent, by and with the advice and consent of the*
 18 *Senate, and who shall assist the Secretary and*
 19 *the Under Secretary in carrying out functions*
 20 *relating to export enforcement.*

21 (c) *ISSUANCE OF REGULATIONS.*—

22 (1) *IN GENERAL.*—*The President and the Sec-*
 23 *retary may issue such regulations as are necessary to*
 24 *carry out this Act. Any such regulations the purpose*
 25 *of which is to carry out title II or title III may be*

1 *issued only after the regulations are submitted for re-*
 2 *view to such departments or agencies as the President*
 3 *considers appropriate. The Secretary shall consult*
 4 *with the appropriate export control advisory com-*
 5 *mittee appointed under section 105(a) in formulating*
 6 *regulations under this title. The second sentence of*
 7 *this subsection does not require the concurrence or ap-*
 8 *proval of any official, department, or agency to which*
 9 *such regulations are submitted.*

10 (2) *AMENDMENTS TO REGULATIONS.—If the Sec-*
 11 *retary proposes to amend regulations issued under*
 12 *this Act, the Secretary shall report to the Committee*
 13 *on Banking, Housing, and Urban Affairs of the Sen-*
 14 *ate and the Committee on International Relations of*
 15 *the House of Representatives on the intent and ra-*
 16 *tionale of such amendments. Such report shall evalu-*
 17 *ate the cost and burden to the United States exporters*
 18 *of the proposed amendments in relation to any en-*
 19 *hancement of licensing objectives. The Secretary shall*
 20 *consult with the appropriate export control advisory*
 21 *committees appointed under section 105(a) in amend-*
 22 *ing regulations issued under this Act.*

23 **SEC. 602. CONFIDENTIALITY OF INFORMATION.**

24 (a) *EXEMPTIONS FROM DISCLOSURE.—*

1 (1) *INFORMATION OBTAINED ON OR BEFORE*
2 *JUNE 30, 1980.—Except as otherwise provided by the*
3 *third sentence of section 502(c)(2) and by section*
4 *507(b)(2), information obtained under the Export Ad-*
5 *ministration Act of 1979, or any predecessor statute,*
6 *on or before June 30, 1980, which is deemed confiden-*
7 *tial, including Shipper's Export Declarations, or with*
8 *respect to which a request for confidential treatment*
9 *is made by the person furnishing such information,*
10 *shall not be subject to disclosure under section 552 of*
11 *title 5, United States Code, and such information*
12 *shall not be published or disclosed, unless the Sec-*
13 *retary determines that the withholding thereof is con-*
14 *trary to the national interest.*

15 (2) *INFORMATION OBTAINED AFTER JUNE 30,*
16 *1980.—Except as otherwise provided by the third sen-*
17 *tence of section 502(c)(2) and by section 507(b)(2),*
18 *information obtained under this Act, under the Ex-*
19 *port Administration Act of 1979 after June 30, 1980,*
20 *or under the Export Administration regulations as*
21 *maintained and amended under the authority of the*
22 *International Emergency Economic Powers Act (50*
23 *U.S.C. 1706), may be withheld from disclosure only*
24 *to the extent permitted by statute, except that infor-*
25 *mation submitted, obtained, or considered in connec-*

1 *tion with an application for an export license or*
2 *other export authorization (or recordkeeping or re-*
3 *porting requirement) under the Export Administra-*
4 *tion Act of 1979, under this Act, or under the Export*
5 *Administration regulations as maintained and*
6 *amended under the authority of the International*
7 *Emergency Economic Powers Act (50 U.S.C. 1706),*
8 *including—*

9 *(A) the export license or other export au-*
10 *thorization itself,*

11 *(B) classification requests described in sec-*
12 *tion 401(h),*

13 *(C) information or evidence obtained in the*
14 *course of any investigation,*

15 *(D) information obtained or furnished*
16 *under title V in connection with any inter-*
17 *national agreement, treaty, or other obligation,*
18 *and*

19 *(E) information obtained in making the de-*
20 *terminations set forth in section 211 of this Act,*
21 *and information obtained in any investigation of an*
22 *alleged violation of section 502 of this Act except for*
23 *information required to be disclosed by section*
24 *502(c)(2) or 507(b)(2) of this Act, shall be withheld*
25 *from public disclosure and shall not be subject to dis-*

1 *closure under section 552 of title 5, United States*
 2 *Code, unless the release of such information is deter-*
 3 *mined by the Secretary to be in the national interest.*

4 *(b) INFORMATION TO CONGRESS AND GAO.—*

5 *(1) IN GENERAL.—Nothing in this title shall be*
 6 *construed as authorizing the withholding of informa-*
 7 *tion from Congress or from the General Accounting*
 8 *Office.*

9 *(2) AVAILABILITY TO THE CONGRESS—*

10 *(A) IN GENERAL.—Any information ob-*
 11 *tained at any time under this title or under any*
 12 *predecessor Act regarding the control of exports,*
 13 *including any report or license application re-*
 14 *quired under this title, shall be made available*
 15 *to any committee or subcommittee of Congress of*
 16 *appropriate jurisdiction upon the request of the*
 17 *chairman or ranking minority member of such*
 18 *committee or subcommittee.*

19 *(B) PROHIBITION ON FURTHER DISCLO-*
 20 *SURE.—No committee, subcommittee, or Member*
 21 *of Congress shall disclose any information ob-*
 22 *tained under this Act or any predecessor Act re-*
 23 *garding the control of exports which is submitted*
 24 *on a confidential basis to the Congress under*
 25 *subparagraph (A) unless the full committee to*

1 *which the information is made available deter-*
2 *mines that the withholding of the information is*
3 *contrary to the national interest.*

4 (3) *AVAILABILITY TO THE GAO.—*

5 (A) *IN GENERAL.—Notwithstanding sub-*
6 *section (a), information described in paragraph*
7 *(2) shall, consistent with the protection of intel-*
8 *ligence, counterintelligence, and law enforcement*
9 *sources, methods, and activities, as determined*
10 *by the agency that originally obtained the infor-*
11 *mation, and consistent with the provisions of*
12 *section 716 of title 31, United States Code, be*
13 *made available only by the agency, upon request,*
14 *to the Comptroller General of the United States*
15 *or to any officer or employee of the General Ac-*
16 *counting Office authorized by the Comptroller*
17 *General to have access to such information.*

18 (B) *PROHIBITION ON FURTHER DISCLO-*
19 *SURES.—No officer or employee of the General*
20 *Accounting Office shall disclose, except to Con-*
21 *gress in accordance with this paragraph, any*
22 *such information which is submitted on a con-*
23 *fidential basis and from which any individual*
24 *can be identified.*

1 (c) *INFORMATION EXCHANGE.*—*Notwithstanding sub-*
 2 *section (a), the Secretary and the Commissioner of Customs*
 3 *shall exchange licensing and enforcement information with*
 4 *each other as necessary to facilitate enforcement efforts and*
 5 *effective license decisions.*

6 (d) *PENALTIES FOR DISCLOSURE OF CONFIDENTIAL*
 7 *INFORMATION.*—

8 (1) *DISCLOSURE PROHIBITED.*—*No officer or*
 9 *employee of the United States, or any department or*
 10 *agency thereof, may publish, divulge, disclose, or*
 11 *make known in any manner or to any extent not au-*
 12 *thorized by law any information that—*

13 (A) *the officer or employee obtains in the*
 14 *course of his or her employment or official duties*
 15 *or by reason of any examination or investigation*
 16 *made by, or report or record made to or filed*
 17 *with, such department or agency, or officer or*
 18 *employee thereof; and*

19 (B) *is exempt from disclosure under this*
 20 *section.*

21 (2) *CRIMINAL PENALTIES.*—*Any such officer or*
 22 *employee who knowingly violates paragraph (1) shall*
 23 *be fined not more than \$50,000, imprisoned not more*
 24 *than 1 year, or both, for each violation of paragraph*

1 (1). *Any such officer or employee may also be re-*
 2 *moved from office or employment.*

3 (3) *CIVIL PENALTIES; ADMINISTRATIVE SANC-*
 4 *TIONS.—The Secretary may impose a civil penalty of*
 5 *not more than \$5,000 for each violation of paragraph*
 6 *(1). Any officer or employee who commits such viola-*
 7 *tion may also be removed from office or employment*
 8 *for the violation of paragraph (1). Sections 503 (e),*
 9 *(g), (h), and (i) and 507 (a), (b), and (c) shall apply*
 10 *to violations described in this paragraph.*

11 ***TITLE VII—MISCELLANEOUS*** 12 ***PROVISIONS***

13 ***SEC. 701. ANNUAL REPORT.***

14 (a) *ANNUAL REPORT.—Not later than February 1 of*
 15 *each year, the Secretary shall submit to Congress a report*
 16 *on the administration of this Act during the fiscal year end-*
 17 *ing September 30 of the preceding calendar year. All Fed-*
 18 *eral agencies shall cooperate fully with the Secretary in pro-*
 19 *viding information for each such report.*

20 (b) *REPORT ELEMENTS.—Each such report shall in-*
 21 *clude in detail—*

22 (1) *a description of the implementation of the ex-*
 23 *port control policies established by this Act, including*
 24 *any delegations of authority by the President and any*
 25 *other changes in the exercise of delegated authority;*

1 (2) *a description of the changes to and the year-*
2 *end status of country tiering and the Control List;*

3 (3) *a description of the petitions filed and the*
4 *determinations made with respect to foreign avail-*
5 *ability and mass-market status, the set-asides of for-*
6 *foreign availability and mass-market status determina-*
7 *tions, and negotiations to eliminate foreign avail-*
8 *ability;*

9 (4) *a description of any enhanced control im-*
10 *posed on an item pursuant to section 201(d);*

11 (5) *a description of the regulations issued under*
12 *this Act;*

13 (6) *a description of organizational and proce-*
14 *dural changes undertaken in furtherance of this Act;*

15 (7) *a description of the enforcement activities,*
16 *violations, and sanctions imposed under this Act;*

17 (8) *a statistical summary of all applications and*
18 *notifications, including—*

19 (A) *the number of applications and notifi-*
20 *cations pending review at the beginning of the*
21 *fiscal year;*

22 (B) *the number of notifications returned*
23 *and subject to full license procedure;*

24 (C) *the number of notifications with no ac-*
25 *tion required;*

1 (D) the number of applications that were
2 approved, denied, or withdrawn, and the number
3 of applications where final action was taken;
4 and

5 (E) the number of applications and notifi-
6 cations pending review at the end of the fiscal
7 year;

8 (9) summary of export license data by export
9 identification code and dollar value by country;

10 (10) an identification of processing time by—

11 (A) overall average, and

12 (B) top 25 export identification codes;

13 (11) an assessment of the effectiveness of multi-
14 lateral regimes, and a description of negotiations re-
15 garding export controls;

16 (12) a description of the significant differences
17 between the export control requirements of the United
18 States and those of other multilateral control regime
19 members, and the specific differences between United
20 States requirements and those of other significant
21 supplier countries;

22 (13) an assessment of the costs of export controls;

23 (14) a description of the progress made toward
24 achieving the goals established for the Department

1 *dealing with export controls under the Government*
 2 *Performance Results Act; and*

3 *(15) any other reports required by this Act to be*
 4 *submitted to the Committee on Banking, Housing,*
 5 *and Urban Affairs of the Senate and the Committee*
 6 *on International Relations of the House of Represent-*
 7 *atives.*

8 (c) *FEDERAL REGISTER PUBLICATION REQUIRE-*
 9 *MENTS.*—*Whenever information under this Act is required*
 10 *to be published in the Federal Register, such information*
 11 *shall, in addition, be posted on the Department of Com-*
 12 *merce or other appropriate government website.*

13 **SEC. 702. TECHNICAL AND CONFORMING AMENDMENTS.**

14 (a) *REPEAL.*—*The Export Administration Act of 1979*
 15 *(50 U.S.C. App. 2401 et seq.) is repealed.*

16 (b) *ENERGY POLICY AND CONSERVATION ACT.*—

17 (1) *Section 103 of the Energy Policy and Con-*
 18 *servation Act (42 U.S.C. 6212) is repealed.*

19 (2) *Section 251(d) of the Energy Policy and*
 20 *Conservation Act (42 U.S.C. 6271(d)) is repealed.*

21 (c) *ALASKA NATURAL GAS TRANSPORTATION ACT.*—
 22 *Section 12 of the Alaska Natural Gas Transportation Act*
 23 *of 1976 (15 U.S.C. 719j) is repealed.*

24 (d) *MINERAL LEASING ACT.*—*Section 28(u) of the*
 25 *Mineral Leasing Act (30 U.S.C. 185(u)) is repealed.*

1 (e) *EXPORTS OF ALASKAN NORTH SLOPE OIL.*—Sec-
 2 tion 28(s) of the Mineral Leasing Act (30 U.S.C. 185(s))
 3 is repealed.

4 (f) *DISPOSITION OF CERTAIN NAVAL PETROLEUM RE-*
 5 *SERVE PRODUCTS.*—Section 7430(e) of title 10, United
 6 States Code, is repealed.

7 (g) *OUTER CONTINENTAL SHELF LANDS ACT.*—Sec-
 8 tion 28 of the Outer Continental Shelf Lands Act (43 U.S.C.
 9 1354) is repealed.

10 (h) *ARMS EXPORT CONTROL ACT.*—

11 (1) Section 38 of the Arms Export Control Act
 12 (22 U.S.C. 2778) is amended—

13 (A) in subsection (e)—

14 (i) in the first sentence, by striking
 15 “subsections (c)” and all that follows
 16 through “12 of such Act,” and inserting
 17 “subsections (b), (c), (d) and (e) of section
 18 503 of the Export Administration Act of
 19 2001, by subsections (a) and (b) of section
 20 506 of such Act, and by section 602 of such
 21 Act,”; and

22 (ii) in the third sentence, by striking
 23 “11(c) of the Export Administration Act of
 24 1979” and inserting “503(c) of the Export
 25 Administration Act of 2001”; and

1 (B) in subsection (g)(1)(A)(ii), by inserting
 2 “or section 503 of the Export Administration Act
 3 of 2001” after “1979”.

4 (2) Section 39A(c) of the Arms Export Control
 5 Act (22 U.S.C. 2779a(c)) is amended—

6 (A) by striking “subsections (c),” and all
 7 that follows through “12(a) of such Act” and in-
 8 serting “subsections (c), (d), and (e) of section
 9 503, section 507(c), and subsections (a) and (b)
 10 of section 506, of the Export Administration Act
 11 of 2001”; and

12 (B) by striking “11(c)” and inserting
 13 “503(c)”.

14 (3) Section 40(k) of the Arms Export Control Act
 15 (22 U.S.C. 2780(k)) is amended—

16 (A) by striking “11(c), 11(e), 11(g), and
 17 12(a) of the Export Administration Act of 1979”
 18 and inserting “503(b), 503(c), 503(e), 506(a),
 19 and 506(b) of the Export Administration Act of
 20 2001”; and

21 (B) by striking “11(c)” and inserting
 22 “503(c)”.

23 (i) OTHER PROVISIONS OF LAW.—

24 (1) Section 5(b)(4) of the Trading with the
 25 Enemy Act (50 U.S.C. App. 5(b)(4)) is amended by

1 *striking “section 5 of the Export Administration Act*
 2 *of 1979, or under section 6 of that Act to the extent*
 3 *that such controls promote the nonproliferation or*
 4 *antiterrorism policies of the United States” and in-*
 5 *serting “titles II and III of the Export Administra-*
 6 *tion Act of 2001”.*

7 *(2) Section 502B(a)(2) of the Foreign Assistance*
 8 *Act of 1961 (22 U.S.C. 2304(a)(2)) is amended in the*
 9 *second sentence—*

10 *(A) by striking “Export Administration Act*
 11 *of 1979” the first place it appears and inserting*
 12 *“Export Administration Act of 2001”; and*

13 *(B) by striking “Act of 1979)” and insert-*
 14 *ing “Act of 2001)”.*

15 *(3) Section 140(a) of the Foreign Relations Au-*
 16 *thorization Act, Fiscal Years 1988 and 1989 (22*
 17 *U.S.C. 2656f(a)) is amended—*

18 *(A) in paragraph (1)(B), by inserting “or*
 19 *section 310 of the Export Administration Act of*
 20 *2001” after “Act of 1979”; and*

21 *(B) in paragraph (2), by inserting “or 310*
 22 *of the Export Administration Act of 2001” after*
 23 *“6(j) of the Export Administration Act of 1979”.*

24 *(4) Section 40(e)(1) of the State Department*
 25 *Basic Authorities Act of 1956 (22 U.S.C. 2712(e)(1))*

1 *is amended by striking “section 6(j)(1) of the Export*
 2 *Administration Act of 1979” and inserting “section*
 3 *310 of the Export Administration Act of 2001”.*

4 (5) *Section 205(d)(4)(B) of the State Depart-*
 5 *ment Basic Authorities Act of 1956 (22 U.S.C.*
 6 *305(d)(4)(B)) is amended by striking “section 6(j) of*
 7 *the Export Administration Act of 1979” and insert-*
 8 *ing “section 310 of the Export Administration Act of*
 9 *2001”.*

10 (6) *Section 110 of the International Security*
 11 *and Development Cooperation Act of 1980 (22 U.S.C.*
 12 *2778a) is amended by striking “Act of 1979” and in-*
 13 *serting “Act of 2001”.*

14 (7) *Section 203(b)(3) of the International Emer-*
 15 *gency Economic Powers Act (50 U.S.C. 1702(b)(3)) is*
 16 *amended by striking “section 5 of the Export Admin-*
 17 *istration Act of 1979, or under section 6 of such Act*
 18 *to the extent that such controls promote the non-*
 19 *proliferation or antiterrorism policies of the United*
 20 *States” and inserting “the Export Administration*
 21 *Act of 2001”.*

22 (8) *Section 1605(a)(7)(A) of title 28, United*
 23 *States Code, is amended by striking “section 6(j) of*
 24 *the Export Administration Act of 1979 (50 U.S.C.*

1 *App. 2405(j))” and inserting “section 310 of the Ex-*
 2 *port Administration Act of 2001”.*

3 *(9) Section 2332d(a) of title 18, United States*
 4 *Code, is amended by striking “section 6(j) of the Ex-*
 5 *port Administration Act of 1979 (50 U.S.C. App.*
 6 *2405)” and inserting “section 310 of the Export Ad-*
 7 *ministration Act of 2001”.*

8 *(10) Section 620H(a)(1) of the Foreign Assist-*
 9 *ance Act of 1961 (22 U.S.C. 2378(a)(1)) is amended*
 10 *by striking “section 6(j) of the Export Administration*
 11 *Act of 1979 (50 U.S.C. App. 2405(j))” and inserting*
 12 *“section 310 of the Export Administration Act of*
 13 *2001”.*

14 *(11) Section 1621(a) of the International Finan-*
 15 *cial Institutions Act (22 U.S.C. 262p–4q(a)) is*
 16 *amended by striking “section 6(j) of the Export Ad-*
 17 *ministration Act of 1979 (50 U.S.C. App. 2405(j))”*
 18 *and inserting “section 310 of the Export Administra-*
 19 *tion Act of 2001”.*

20 *(12) Section 1956(c)(7)(D) of title 18, United*
 21 *States Code, is amended by striking “section 11 (re-*
 22 *lating to violations) of the Export Administration of*
 23 *1979” and inserting “section 503 (relating to pen-*
 24 *alties) of the Export Administration Act of 2001”.*

1 (13) *Subsection (f) of section 491 and section*
 2 *499 of the Forest Resources Conservation and Short-*
 3 *age Relief Act of 1990 (16 U.S.C. 620c(f) and 620j)*
 4 *are repealed.*

5 (14) *Section 904(2)(B) of the Trade Sanctions*
 6 *Reform and Export Enhancement Act of 2000 is*
 7 *amended by striking “Export Administration Act of*
 8 *1979” and inserting “Export Administration Act of*
 9 *2001”.*

10 (15) *Section 983(i)(2) of title 18, United States*
 11 *Code (as added by Public Law 106–185), is*
 12 *amended—*

13 (A) *by striking the “or” at the end of sub-*
 14 *paragraph (D);*

15 (B) *by striking the period at the end of sub-*
 16 *paragraph (E) and inserting “; or”; and*

17 (C) *by inserting the following new subpara-*
 18 *graph:*

19 “(F) *the Export Administration Act of*
 20 *2001.”.*

21 (j) *CIVIL AIRCRAFT EQUIPMENT.—Notwithstanding*
 22 *any other provision of law, any product that—*

23 (1) *is standard equipment, certified by the Fed-*
 24 *eral Aviation Administration, in civil aircraft, and*

1 (2) *is an integral part of such aircraft, shall be*
 2 *subject to export control only under this Act. Such*
 3 *product shall not be subject to controls under section*
 4 *38(b)(2) of the Arms Export Control Act (22 U.S.C.*
 5 *2778(b)).*

6 (k) *REPEAL OF CERTAIN EXPORT CONTROLS.*—Sub-
 7 *title B of title XII of division A of the National Defense*
 8 *Authorization Act for Fiscal Year 1998 (50 U.S.C. App.*
 9 *2404 note) is repealed.*

10 **SEC. 703. SAVINGS PROVISIONS.**

11 (a) *IN GENERAL.*—All delegations, rules, regulations,
 12 orders, determinations, licenses, or other forms of adminis-
 13 trative action which have been made, issued, conducted, or
 14 allowed to become effective under—

15 (1) *the Export Control Act of 1949, the Export*
 16 *Administration Act of 1969, the Export Administra-*
 17 *tion Act of 1979, or the International Emergency*
 18 *Economic Powers Act when invoked to maintain and*
 19 *continue the Export Administration regulations, or*

20 (2) *those provisions of the Arms Export Control*
 21 *Act which are amended by section 702,*
 22 *and are in effect on the date of enactment of this Act, shall*
 23 *continue in effect according to their terms until modified,*
 24 *superseded, set aside, or revoked under this Act or the Arms*
 25 *Export Control Act.*

1 (b) *ADMINISTRATIVE AND JUDICIAL PROCEEDINGS.*—

2 (1) *EXPORT ADMINISTRATION ACT.*—*This Act*
 3 *shall not affect any administrative or judicial pro-*
 4 *ceedings commenced or any application for a license*
 5 *made, under the Export Administration Act of 1979*
 6 *or pursuant to Executive Order 12924, which is pend-*
 7 *ing at the time this Act takes effect. Any such pro-*
 8 *ceedings, and any action on such application, shall*
 9 *continue under the Export Administration Act of*
 10 *1979 as if that Act had not been repealed.*

11 (2) *OTHER PROVISIONS OF LAW.*—*This Act shall*
 12 *not affect any administrative or judicial proceeding*
 13 *commenced or any application for a license made,*
 14 *under those provisions of the Arms Export Control*
 15 *Act which are amended by section 702, if such pro-*
 16 *ceeding or application is pending at the time this Act*
 17 *takes effect. Any such proceeding, and any action on*
 18 *such application, shall continue under those provi-*
 19 *sions as if those provisions had not been amended by*
 20 *section 702.*

21 (c) *TREATMENT OF CERTAIN DETERMINATIONS.*—*Any*
 22 *determination with respect to the government of a foreign*
 23 *country under section 6(j) of the Export Administration Act*
 24 *of 1979, or Executive Order 12924, that is in effect on the*
 25 *day before the date of enactment of this Act, shall, for pur-*

1 *poses of this title or any other provision of law, be deemed*
2 *to be made under section 310 of this Act until superseded*
3 *by a determination under such section 310.*

4 (d) *LAWFUL INTELLIGENCE ACTIVITIES.*—*The prohi-*
5 *bitions otherwise applicable under this Act do not apply*
6 *with respect to any transaction subject to the reporting re-*
7 *quirements of title V of the National Security Act of 1947.*
8 *Notwithstanding any other provision of this Act, nothing*
9 *shall affect the responsibilities and authorities of the Direc-*
10 *tor of Central Intelligence under section 103 of the National*
11 *Security Act of 1947.*

12 (e) *IMPLEMENTATION.*—*The Secretary shall make any*
13 *revisions to the Export Administration regulations required*
14 *by this Act no later than 180 days after the date of enact-*
15 *ment of this Act.*

Calendar No. 26

107TH CONGRESS
1ST SESSION

S. 149

[Report No. 107–10]

A BILL

To provide authority to control exports, and for
other purposes.

APRIL 2, 2001

Reported with an amendment